

THE LITTLEJOHN LIBEL SUIT.

THE CASE

OF

DE WITT C. LITTLEJOHN
against
HORACE GREELEY,

TRIED AT THE

OSWEGO TERM OF THE SUPREME COURT OF THE STATE OF
NEW YORK, AT PULASKI, SEPT. 10-13, 1861,

BEFORE

HIS HONOR, WILLIAM J. BACON.

CONTAINING

THE RULINGS OF JUDGE BACON, THE ARGUMENTS, AND POINTS OF
MESSRS. D. H. MARSH, I. T. WILLIAMS, JOHN K. PORTER,
CHAS. B. SEDGWICK, AND HENRY A. FOSTER.

PHONOGRAPHICALLY REPORTED BY JAMES L. CROSBY.

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THE LITTLEJOHN LIBEL SUIT.

THE EVIDENCE, ARGUMENTS, CHARGE, &c.

The case of Littlejohn agt. Greeley, which has excited so much interest—more especially in the political community—was brought to an issue on Thursday, September 12th. The trial commenced on Tuesday, in the Supreme Court Circuit, held at the village of Pulaski, Oswego County. Curiosity and interest had drawn large numbers of people from the surrounding country and from nearly all parts of the State, who looked forward with anxiety to the expected developments of the doings of the *third House*, in the legislative business of the State—the list of witnesses on both sides comprising many of the most prominent political men—and the little town was crowded with strange faces.

Justice Bacon of Utica presided. The Hon. Henry Foster of Rome, the Hon. C. B. Sedgwick of Syracuse, and Messrs. Marsh, Webb, and J. C. Churchill of Oswego, appeared for the plaintiff. I. T. Williams, esq., of New-York, Messrs. Porter and Cagger of Albany, and Messrs. Grant and Allen of Oswego, appeared for the defendant.

The Complaint and Answer in this case are as follows:

SUPREME COURT—COUNTY OF OSWEGO.

SUMMONS FOR RELIEF.

De Witt C. Littlejohn agt. Horace Greeley.

TO HORACE GREELEY, DEFENDANT: You are hereby summoned to answer the complaint of De Witt C. Littlejohn, plaintiff, a copy of which is herewith served on you, and to serve a copy of your answer on the subscribers, at their office in the City and County of Oswego, within twenty days after the service of this summons, exclusive of the day of service, or the plaintiff will apply to the Court for the relief demanded in the complaint.

MARSH & WEBB.

Plaintiff's Attorneys.

SUPREME COURT.

De Witt C. Littlejohn agt. Horace Greeley.

Oswego County, ss.—De Witt C. Littlejohn, plaintiff in this action, complains of Horace Greeley, defendant therein, and shows to the Court here that the plaintiff was a member of the Legislature of the State of New-York, whose session commenced on the first Tuesday of January, 1860, and was the representative from the first Assembly District of Oswego County in the Assembly of said State at said session of said Legislature, and the said plaintiff further shows that before the 26th day of September, 1860 he had been renominated in said Assembly District as, and had become, and was a candidate for re-election as member of the Assembly of the State of New-York to represent said district in the Legislature of said State.

That on or about the 26th day of September, 1860, the said defendant was one of the editors, proprietors and publishers of a certain newspaper, printed and published in the City of New-York under the name of THE "NEW-YORK TRIBUNE." That on or about the said 26th day of September, the said defendant contrived and wickedly and maliciously intending to injure the plaintiff in his good name, fame and credit, and to cause it to be suspected and believed that the plaintiff was influenced in his acts and doings as such legislator by corrupt motives, and that he was corrupt as such legislator, and was therefore an unfit and improper man to be re-elected as a member of the Legislature, did, to wit: at Oswego in the County of Oswego and elsewhere falsely, wickedly, and maliciously compose and publish and cause and procure to be printed and published in the said newspaper of and concerning the plaintiff and of and concerning his acts and doings as such legislator aforesaid, and against his good name, fame and character, a false, scandalous, malicious and defamatory libel in the words and figure following, that is to say: "A correspondent earnestly inquires our opinion concerning the nomination for members of the Legislature of D. C. Littlejohn at Oswego (the plaintiff meaning), and of Austin Meyers at Syracuse. On this subject our opinion has been so often expressed that it cannot be in doubt. Both these persons were prominent in the corrupt legislation of last Winter. Accordingly, both of them ought now to be defeated. Or, if they must be sent back to pursue their career at Albany, it should not be the work of Republican voters" (meaning and intending thereby to charge that the legislation of the Legislature of the State of New-York, last Winter, was corrupt, that the legislators thereof were influenced by corrupt motives, and that the plaintiff was prominent in such corrupt legislation, and that, being thus corrupt, he ought not to be re-elected to the said Legislature), and this complainant further shows that, by reason of the printing and publishing of the said false, scandalous, malicious, slanderous, and defamatory words, by the said defendant, the said plaintiff has sustained great injury to his good name, fame, credit, and character, and has been, and is, suspected to have acted corruptly as such legislator aforesaid, to the damage of the said plaintiff of twenty-five thousand dollars.

Wherefore, the plaintiff demands judgment against the said defendant for the said sum of \$25,000, with costs.

MARSH & WEBB, of the City of Oswego,
Plaintiff's Attorneys.

State of New-York, Oswego County, ss.: De Witt C. Littlejohn, the above-named plaintiff, being duly sworn, deposes and says that the foregoing complaint is true, of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

D. C. LITTLEJOHN.

Sworn this 5th day of December, 1860, before me.

J. E. BLODGETT, Justice of the Peace.

SUPREME COURT.

De Witt C. Littlejohn agt. Horace Greeley.

County of Oswego, ss.—The defendant in this action by I. T. Williams, his attorney for answer to the plaintiff's complaint therein, says: That at the time of, and immediately before the publication of the words in the said complaint set forth and referred to, the said defendant, as such editor and proprietor of said newspaper, was earnestly inquired of as to his opinion concerning the nomination for a member of the Legislature of the said plaintiff; that as such editor and publisher, and as a public journalist, it was the business, duty and right of the said defendant, fully, fairly, and truly to answer such inquiry, and state fully and according to his best knowledge, information and belief, such opinion as he entertained concerning said plaintiff, and concerning his said nomination, and the facts and representations and reports upon which such opinion was founded; that, thereupon, and in pursuance of said inquiry, and in answer thereto, he did publish and cause to be printed and published the words in said complaint set forth; that said publication was made in good faith, in the true and honest belief that the same was in every respect just and true, and with good motives, and for justifiable ends, to wit: that some person, other than the said plaintiff, and more fit and proper to be a legislator of the State of New-York than the said plaintiff, should be elected as a member of said Legislature, instead and in place of the said plaintiff, who was so then in nomination, and a candidate for election, as a member of such Legislature, and canvassing for votes in favor of his election to said Legislature in preference to a candidate who, as the defendant verily believed, was a better and a fitter man, to wit; one Leander Babcock, who was the candidate and in nomination for election as a member of said Legislature in opposition to said plaintiff.

And for a second and separate defense to said cause of action in said complaint alleged, the said defendant says that the Legislature and the said Assembly in said complaint referred to, during the session thereof, in the year 1860, passed divers and sundry acts, to wit: An act entitled "An Act to authorize the sale of certain lands belonging to the State, and to empower the Corporation of the City of New-York to purchase the same." Also an act entitled "An Act to authorize the construction of a railroad in Avenue D, East Broadway, and other streets and avenues of the City of New-York." Also an act entitled "An Act to authorize the construction of a railroad in Seventh avenue, and in certain other streets and avenues of the City of New-York." Also an act entitled "An Act to authorize the construction of a railroad in Fourteenth street and in other streets and avenues of the City of New-York;" also, an act entitled "An act to authorize the construction of a railroad in Tenth avenue, Forty-second street, and certain other avenues and streets in the City of New-York."

That said acts were and are, and for a long time before the publication of the said words in the said complaint set forth, had been called, denominated, and known in the community and among all good and worthy citizens of the State of New-York as "corrupt legislation," and were at the time of said publication so denominated in common parlance by such citizens, the whole of which said legislation was greatly disapproved of by all such good and worthy citizens of the State of New-York, and was in fact mischievous and injurious to the public interest.

That in and about procuring such legislation large sums of money were generally and publicly reported, understood, reputed, and believed to have been improperly used and expended in influencing members of said Legislature to vote for the same, and other improper influences were generally and publicly reported, understood, and believed to have been used for that purpose, and which said legislation was generally reputed, understood, and believed to be and to have been corrupt. That this defendant, at the time of the publication in said complaint mentioned, fully believed such reports to be true. That the said plaintiff in fact was active and prominent in said legislation—to wit: as Speaker of the said House of Assembly, and otherwise actively exerted himself in procuring the passage of said acts in the said House of Assembly, and did, as a member of said House, therein advocate and vote for the passage of the same, publicly and privately, and was generally known to favor and to be in favor of said acts and of the passage thereof respectively.

As to each of the said acts the said defendant says, that at the times when the same was passed and was so voted for by the said plaintiff, the same was, ever since hath been, and still is, of a nature and tendency highly prejudicial to the interests and welfare of the people of this State; that at the time when he, the said plaintiff, so voted for the same he, the said plaintiff, well knew and fully believed such to be the evil nature and tendency of such act, and, as he also well knew, was bound in law and morals, and by his duty as such member of Assembly, to vote against the same; yet he, the said plaintiff, wickedly, willfully, and corruptly disregarding his said duty in that behalf, and with the dishonest intent and purpose of working such prejudice to the interests and welfare of the said people, and sacrificing the same to advance the personal and individual interests hereinafter in this defense stated, did vote for such act as aforesaid; that said plaintiff's motive in so willfully and corruptly voting for the said first-mentioned act was so to advance the personal and individual interests of James B. Taylor and Owen W. Brennan, and divers other persons interested therein, and that as to each of the other acts above mentioned, his motive in so voting for the same was so to advance the personal and individual interests of the persons named in the first section of such act, and of divers other persons interested in said acts respectively, as the defendant is informed and believes.

That the said defendant did with good motives and for justifiable ends, and in accordance with his duty as such journalist, editor, and publisher, and in good faith, and without any malice or other evil, or unjustifiable motive, cause to be printed and published the said words in said complaint set forth.

And for a third and separate defense to the said action, the defendant says, that the Legislature of the State of New-York, which commenced its session on the first Tuesday of January, 1860, and the House of Assembly of said Legislature did, during said session, pass divers acts, to wit: the acts aforesaid, the passage of which said acts by the House of Assembly and Senate of such Legislature were aided and promoted by improper influences brought to bear upon said Legislature, and upon divers members thereof, and that corrupt influences were used to procure the passage of said acts, by persons who had no voice or vote in said Legislature, and who were not entitled or authorized to interfere with said Legislature, or the members of said Houses, or either of them, or in the legislation thereof, but who, on the contrary thereof, acted from personal, selfish, mercenary, and corrupt motives, and not with a view to promote the common weal or general good of the State, or the citizens thereof generally.

And that such legislation thereby became and was corrupt legislation, and was so generally denominated and believed to be by the good and worthy citizens of this State, who were conversant with the facts con-

nected therewith, and by the said defendant; that the said plaintiff was a prominent member of said Legislature, to wit, Speaker of said House of Assembly, and prominent in aiding and promoting said legislation, and advocated the same. And the defendant says that the said words in said complaint set forth, and so published by the said defendant as aforesaid, were not understood by any person to have any other intent or meaning than to charge as herein aforesaid, and that within that intent and meaning the said charge is true, as hereinbefore set forth; that the said defendant, in the printing and publication of the said article or words in the said complaint set forth, caused to be printed and published what he verily believed to be true, and what he believed the public interest required to be known, and what he believed it was his duty to cause to be printed and published, and that in the said printing and publication he acted without malice, and in the discharge of his duty as such public journalist, editor and proprietor, he being, as such public journalist, charged with the duty and invested with the right of fully canvassing the merits and publicly discussing the fitness of all persons who were candidates for election to public office or places of public trust.

And for a fourth and separate defense to the said cause of action, the defendant says, on information and belief, that the acts aforesaid were in fact corrupt legislation, and that the passage of said acts, and each of them, by the said Legislature, and by the said House of Assembly, was aided and promoted by persons commonly called Lobby Members, and persons who had no voice or vote in said Legislature, and were not entitled to any voice or vote therein—and by persons who had a personal, private and pecuniary interest in the said acts, and by persons who sought in obtaining the passage and enactment thereof, and of each of them, to promote their own personal and private interest in disregard of and to the detriment of the general and public interest, and the interest and well-being of the State, and the people thereof at large. And that the passage of said acts was aided, and that the same were passed and enacted by the said Legislature and by the said Assembly, by means of and through the improper and corrupt influences aforesaid, brought to bear upon individual members of said Legislature and said House of Assembly, and that the said individual members of said Legislature and of said House of Assembly were persuaded and influenced by unstatesmanlike, wrong, selfish, sordid, pecuniary and corrupt motives in passing, enacting, advocating, and voting for the passage and enactment of said acts, and each of them, and so promoted, advocated, passed and enacted said acts, and each of them, influenced by favor and affection, reward, and the hope of reward, and from pecuniary and corrupt motives, aims, ends and purposes, and for and in the hope of receiving money, franchises, privileges, and other pecuniary, selfish, and mercenary considerations, motives, aims, ends and purposes, as well for themselves as for their friends and other persons who might and were expected to account to such individual members of said Legislature and House of Assembly for such pecuniary gain or advantage as should or might come to them from, on account of, or by reason of such legislation.

And the defendant says, for reasons aforesaid, the said Legislation in the said words referred to was corrupt legislation—and that the said plaintiff was active and prominent in said legislation, and was during the whole thereof Speaker of the House of Assembly, and was a very influential member thereof, and that the said plaintiff advocated the passage and enactment of said acts, and was known as, and was a prominent promoter and advocate, and voted for said acts and each of them.

And the said defendant says, that the words in the said complaint set forth, so published by the said defendant as aforesaid, were not understood by any per-

son to have any intent or meaning, and the said defendant had no intent or meaning in the use and publication of said words, than to charge the said plaintiff as herein aforesaid, nor were the said words understood to charge anything other than as in this answer is hereinbefore set forth to be the truth concerning said Legislation and the said plaintiff.

And the defendant says that, in publishing said words in said complaint set forth, and in causing the same to be printed and published, he published and caused to be printed and published, the truth, and that said printing and publication were done and caused to be done with good motives, and for justifiable ends, and without malice or other improper motive.

And fifthly and separately, the defendant further asserts and states the several facts and circumstances above in the defenses stated, and will give the same in evidence on the trial of this action, in mitigation, to reduce the amount of damages which the plaintiff may claim to recover.

I. T. WILLIAMS, Attorney for Defendant.

City and County of New-York, ss.—Horace Greeley, the defendant in the above-entitled action, being duly sworn, deposes and says, that he has read the foregoing answer, and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to these matters he believes the same to be true.

HORACE GREELEY.

Sworn to before me this 23d day of February, 1861.

THOS. SADLER, Notary Public.

SUPREME COURT—CIRCUIT—OSWEGO COUNTY—Before Justice BACON.
Littlejohn agt. Greeley.

MONDAY, Sept. 9, 1861.

Attachments were ordered, on the application of Mr. Allen for defendant, for witnesses not answering to their names, viz.: George Law, Thurlow Weed, James B. Taylor, John Kerr, Hugh J. Hastings, Abraham Van Vechten, Richard Busted, and others.

Mr. Grant for defendant, when the case had been called on the calendar, suggested that on account of the absence of so many witnesses, the cause be set down for to-morrow; they would all be ready, doubtless, for to-morrow, and it would be more convenient for all.

Mr. Foster, for plaintiff, assenting, it was so ordered; and cause set down accordingly.

TUESDAY AFTERNOON, Sept. 10, 1861.

Case called, and the following gentlemen impaneled as Jurors:

| | |
|------------------------|----------------|
| PETER H. MORRISON..... | Williamstowne. |
| SAMUEL BALCOM..... | Redfield. |
| LEWIS SMITH..... | Constantia. |
| MIRON STEVENS..... | Orwell. |
| JOHN R. MITCHELL..... | Parish. |
| NELSON WHITE..... | Richland. |
| L. WEED..... | Richland. |
| WILLIAM SCRIPTURE..... | Sandy Creek. |
| WALTER PIERCE..... | Sandy Creek. |
| HENRY MENDALL..... | Amboy. |
| DANIEL B. DARING..... | Constantia. |
| GEORGE C. PARKER..... | Constantia. |

Mr. Williams—If your Honor please, I suppose we have the opening.

Mr. Foster—I suppose not; the question of damages at least is concerned here, and of course we have the opening.

Mr. Williams—The criterion of opening, if your Honor please, is, who has the affirmative? The answer in this case contains not a syllable of denial of any

kind or character; the question of damages is always open in every case.

The Court—Is the publication admitted by the answer?

Mr. Williams—Everything, Sir; the answer contains not one syllable of denial of any kind whatsoever.

The Court—The rule on that question is settled, I believe; when the complaint is all admitted, the defense has the right to open.

Mr. Foster—That, I believe your Honor, is confined to cases when the sum to be received is specific, and the plaintiff, therefore, has nothing to do; and confined to those cases alone. I have not examined all the authorities in reference to this particular, because I did not suppose the question would be raised; but I feel entirely confident that in *all* cases where the damages are not definitely fixed in the complaint, the plaintiff has the opening.

The Court—What would be the object; is there anything for you to prove?

Mr. Foster—No, Sir; nothing at all.

The Court—I have never known the question raised in an action of this kind, where there is a question of damages. Generally, where the cause of action is admitted, there is no controversy.

Mr. Foster—We think that in the opening of this case we have to present this libel to the Jury; and how is it to be done unless we are to do it?

Mr. Williams—Every allegation in the complaint is admitted. My learned friend on the other side will find it impossible to put his hands upon a case which confirms the statement he has made.

Mr. Foster—I can find an abundance of them.

Mr. Williams—You will not find one in this country or in England.

The Court—A very recent case occurred in the Vth District, when Judge Smith gave the opinion, when the question arose, and he allowed the plaintiff the opening; but, on an appeal, that decision was reversed, and the Supreme Court held that he was in error to allow it.

Mr. Williams—I have a case here—in the 7th of English Equity—a case brought for an injury where the question of damages is entirely open—and the Court says: "The test to determine the order of beginning a trial, is to consider which party would be entitled to the verdict, supposing no evidence given on either side, as the burden of proof must lie on his adversary."

Mr. Foster—I undertake to say that I can find cases of our own if I have time; I am very sure my friend is mistaken.

Mr. Williams—I think I have looked at all the cases and I am quite sure there is no such distinction as my learned friend seems to think.

The Court—I am sorry this question had not attracted the attention of Counsel before.

Mr. Marsh—Perhaps your Honor may be relieved by the fact that the pleadings do not admit all the allegations. The gentleman states that we aver that the libel was upon Mr. Littlejohn and of his particular conduct, while the third and fourth answers aver that they did publish as stated, but they do not admit the allegation that they refer to, and are spoken of, Mr. Littlejohn in his individual capacity as a legislator; but say they spoke of legislation. I know that on a motion once made in this case, my learned friend contended that was a question to be submitted to the Jury; at any rate he has not admitted all the allegations in his answer. I may as well read them.

[The counsel here read the third and fourth answers in pleadings already published.]

Mr. Williams—If your Honor please, all proper admissions are admissions by silence in the pleadings.

The Code provides that everything alleged in the complaint shall be deemed to be admitted which is not denied in the answer. In this answer there is not a syllable of denial. We have taken the affirmative on every point. We have not denied one syllable, but we have taken the burden of proof directly upon our shoulders. I see nothing in what my learned friend has read to justify the statement he made before he commenced reading. I submit to your Honor that the case we have presented is one where the damages were not fixed. But if that were the criterion, damages in this case, judging from the pleadings, be said to be fixed, for the plaintiff says he has suffered damages to the amount of \$25,000, and the allegation is not denied in the answer.

The Court—I don't see how there is any evidence to be given in this case by the plaintiff; and if there was none to be given on the other side, he would undoubtedly obtain a verdict. Even in a case on a promissory note, there would still have to be a computation of interest.

Mr. Foster—If your honor please—If we show the authorities, will you give us our rights?

The Court—Most certainly.

Mr. Marsh—If the gentleman will take the benefit of what he says, we will take damages for \$25,000.

Mr. Williams—I speak of the pleadings.

Mr. Sedgwick—Why, we should then be at liberty to go on and give evidence; there is no possible evidence upon which you could give \$25,000—no possible way of taking a judgment for \$25,000.

Mr. Williams—It is very easy for the counsel to maintain that they could prove facts not contained in the complaint; but they do not pretend that anything in the complaint is denied.

Mr. Sedgwick—Do you pretend that we could take a verdict for \$25,000?

Mr. Williams—That is not material in the case at all; you have nothing to prove, if we sit down and say nothing you would claim judgment on the pleadings.

Mr. Foster—We could prove other publications to show express malice, to enhance our damages.

The Court—What! not under your present complaint?

Mr. Foster—Certainly; there is no doubt of that.

Mr. Williams—It would be impossible for them to prove malice beyond what is set forth in the complaint; every syllable of that stands, if we were to give no evidence they can give none; you cannot prove what you have not averred; the Court of Appeals have decided that.

Mr. Foster suggested that if the Court would take a recess the authorities in the case might be found.

The Court took a recess of one hour.

EVENING SESSION.

Mr. Foster—I will cite to your Honor from Graham's Practice, page 289; also, from 3d Bosworth, commencing page 200, the case of Fry and Bennett—the 2d note and the 5th head note. The answer in the case of Fry and Bennett was as follows: The defense set up,

1. "The items contained in the article are true." That is our case here.

2. "These articles are fair and impartial criticisms." That is our case too.

3. "That the defendant had probable cause to believe them to be true, and did believe them to be true, and published them without any malice." That is our case also.

Mr. Williams—If your honor please, I was not ignorant of the case of Fry and Bennett; and if the counsel had only read that case, I apprehend he would not have made the statement which he did. The rule laid down in Graham's Practice embraces all cases. The learned counsel claims an exception in all those cases where the amount of damages is not

fixed in the complaint; yet that is certainly at variance with three or four of the cases cited in Graham. There is no doubt, as said in Graham, that the English Judges had begun to refine upon this matter, and finally they came to a determination that they would establish an arbitrary rule. Consequently they singled out some cases in which they would give the opening to the plaintiff, and among them was the case of libel. They did not establish a principle. Your Honor will observe they only establish a rule, and the rule is wholly arbitrary, for they omit the case of malicious prosecution. Now, if your Honor please, as to the case of Fry and Bennett. If the learned counsel wishes to stand upon that case, let him admit on the record that the communication is a privileged one. Let him admit that, and he must give affirmative evidence of malice; and with that admission on the record, let him proceed and give his affirmative proof. Now, I assert that the rule I maintain is the uniform practice of the Courts in this State. We have never adopted the English arbitrary rule.

THE COURT—I don't know that there has been any rule established in the Courts in this State; I am certain there is not any in the rural districts. But it seems to me that the case in 3d Bosworth is very clear authority of the right of the plaintiff to open. I shall rule that the plaintiff has the right accordingly.

Exception for defendant.

MR. MARSH'S OPENING.

MR. MARSH—If the Court please, and Gentlemen of the Jury; the case which you are called upon to try is an action for libel: a printed communication in THE TRIBUNE, published in New-York by Horace Greeley, the defendant, charging De Witt C. Littlejohn, the plaintiff, with corruption as a legislator. Several articles appeared at different times in THE TRIBUNE upon that subject—one upon the 11th of September, and another one—the one upon which this action is founded—on the 26th of September, and a third one on the 8th of October. Mr. Littlejohn saw the article of the 26th of September, the one upon which we sue, and wrote to Mr. Greeley expressly denying the allegations in that article. Mr. Greeley published that letter, with a tirade of abuse—a libel far worse in point of fact than the other one—showing a degree of maliciousness about it, and without any further inquiry into its premises. In selecting upon the libel on which the action is brought—for we did not choose to bring an action on all of them—we selected this second one, which is in these words:

"A correspondent earnestly inquires our opinion concerning the nomination for members of the Legislature of D. C. Littlejohn at Oswego and of Austin Myers at Syracuse. On this subject our opinion has been so often expressed that it cannot be in doubt. Both these persons were prominent in the corrupt legislation of last Winter. Accordingly, both of them ought now to be defeated. Or if they must be sent back to pursue their career at Albany, it should not be the work of Republican voters."

Thereby charging Mr. Littlejohn, as a member of that Legislature (and it is well known to all of us that he was Speaker of the House at the time), with corruption as a legislator. By bringing the action upon that particular libel, we will throw the whole subject open without limit, and not specifying the charge which Mr. Greeley had seen fit to make in other publications, and throw the broad subject open upon the charge of corruption as broad as it could be made, and give him all the chance to prove any act of corruption upon the part of Mr. Littlejohn. But, now, gentlemen, we have come here to try this action; and that the case may be fully understood, it may be right and proper that I should at some length state the grounds of the defense, which they have set up in their several answers. And it is of some importance, your Honor, that I should state them here, because, upon these

answers, the question of testimony will mainly depend; and the length or brevity of the cause which we are about to try, will be measured. The first answer which they set up, I call an answer, claiming the communication as a "privileged communication," for he says:

[The counsel here read the first answer from the pleadings.]

The first time I may venture to say that he ever gave a Democrat a character superior to that of a Whig or a Republican, whether true or false. That we claim to be a plea of privilege and that is a question for the Court solely to decide upon. I know on a previous occasion on a motion in the matter it was argued that was a question for the jury, but I conceive however it is a question solely for the court.

Now for the second plea:

[The counsel here read the second answer in the pleadings.]

There, I conceive, is a good and valid plea in this case. If they can search into the recesses of Mr. Littlejohn's heart and find that his motive was corrupt, and find what his thoughts are, and if he thought corruptly, why then, they have made out their justification and not till then. And yet in relation to these same acts not a remonstrance was heard from the city of New-York—these railroad acts dignified by the Hon. Horace Greeley as the "Gridiron Railroads"—not a remonstrance from the whole city of New-York was ever heard against any one of them. There were applications for numerous others, and often as against these, but no remonstrance was heard; though indeed another Legislature has intervened, and though Mr. Littlejohn has been again the Speaker of that Assembly. Yet no one remonstrance against these railroads has been heard except through Horace Greeley and his TRIBUNE. Now for the third defense. They say:

[The counsel read the third answer in pleadings.]

Now, that we say is a plea amounting in a few words simply to this: "that the legislation was corrupt, and all we intended to charge was that there was there corrupt legislation, not that Mr. Littlejohn was corrupt." Now, we hold that no evidence whatever can be given to show any such thing as that. If that were so—if evidence could be given as to these reports of what was done in the Lobby, why all the members of the Third House, there, Horace Greeley himself included, might be called up to testify what they did and who they did it with; who they paid money to; whose influence they tried to procure, and what means they took to procure it. You will see at once, that such a thing could not be done, because the Legislature is not on trial here; it is Mr. Littlejohn alone that is on trial—and the question is, whether he is guilty of corrupt legislation. Now, the fourth answer, I may say, is not of the same import. I think the Counsel will not require that I should read it. The fifth answer says:

[The Counsel read the fifth answer.]

Now, under this state of pleading, your Honor will perceive at once the questions will arise how far the reputation of any such thing or any such charges could be evidence, or how the acts of any other person than Mr. Littlejohn can be evidence. Every person knows how easy it is to get up a report of corruption. No man, your Honor, no man, gentlemen, knows that better than Horace Greeley himself; for no one among you has probably forgotten the charge which was made against him—honest as he is—with having received a bribe at Washington for the purpose of passing certain corrupt measures there. No one has probably forgotten the fact that he was charged with receiving a \$1,000 check, and Mr. Greeley felt very indignant about it, and undertook to explain the matter and show that he received the check honestly. If reputation is enough to make the standard of character the reputation which the honorable gentleman there acquired might condemn him. I speak of it to

show that mere reputation is not to take away the character of any man; and I say that the rule of law, established by repeated and numerous decisions in this State, is not to admit such testimony to be given, and they used language like this: "If such testimony were to be allowed, and public report or reputation being enough to fix the charge—all that anybody would have to do to ruin another individual, would be to get up a report that he was guilty of a certain act, and when he was prosecuted for libel, then he might give in evidence the very report which he had himself created in order to put the other individual down."

I have been, your Honor, a little more full in stating these things, and in stating the pleadings, that you might see and be fully aware of the kind and character of the testimony which must be offered under such a state of the pleadings. We are all aware that a large number of the witnesses are here—a large number from Oswego, a large number, I understand, from the City of New-York, and a number from this place—and judging from the pleadings, we can suppose that the line of proof which will be attempted will be—first, that there was such a reputation, which we shall object to, of course; next, that there was a reputation of corrupt legislation; that we shall object to because it does not tend to convict Mr. Littlejohn. They will attempt, undoubtedly to show that in the procuring of these acts certain persons were applicants, and certain other persons were stockholders, with a view of showing some corruption in that matter. To that we shall object; if they can show that De Witt C. Littlejohn was a stockholder, or show that he was corrupt, they are at liberty to do. But if your Honor, after a review of the case and the law upon the subject, sees that this testimony is not proper, we then bring this case to a speedy conclusion, for it leaves them only one other ground of defense, or two at the most—one, to show actual corruption in De Witt C. Littlejohn, and the other—but in fact it is the only defense they can have—the other may be to attack his general moral character, and if the gentlemen choose to do that, they are welcome to the fullest opportunity.

TESTIMONY OF JAMES PLATT.

JAMES PLATT for plaintiff testified that he was acquainted with the circulation of THE N. Y. TRIBUNE.

Mr. PORTER for defendant objected, on the ground that there was no allegation which calls for the proof; and there is no denial of the matter alleged in the complaint.

Overruled—Exception for defendant.

Mr. PLATT further testified the circulation of THE TRIBUNE was very large in Western New-York, Ohio, Wisconsin, and Michigan—though he was not a subscriber to the paper—and from general reputation he should say it had an extended circulation over this county [Oswego].

Mr. MARSH then offered in evidence a copy of THE N. Y. TRIBUNE, dated Sept. 11, 1860, and offered to read the article headed "Legislative Corruption," for the purpose of showing the *quo animo*.

Mr. PORTER for defendant objected on the following grounds:

1st. That the article is not counted on in the complaint.

2d. That it does not appear to have been written by the defendant.

3d. That it is not within the issue made by the pleadings.

Objection overruled—exception for defendant.

Mr. MARSH then read the article referred to as follows:

LEGISLATIVE CORRUPTION.—Certain local journals persist in misrepresentations of the course of THE TRIBUNE respecting State matters so gross that we cannot refrain from noticing them. We take the following from a leader in the last *Chatauga Democrat* as a sample:

"There may have been, and doubtless was, the usual amount of 'Legislative corruption' at Albany last Winter. But that there was that which should justify the wholesale and indiscriminate denunciations of that Legislature, with which the columns of THE TRIBUNE have teemed for many months, we have no evidence of, and do not believe.

"In our own county, Mr. W. L. Sessions was the especial object of THE TRIBUNE's denunciations, and why? Simply because he was a *leading* and prominent member of the Senate. Although the shafts of THE TRIBUNE have assumed a more *personal* aspect toward Mr. Sessions, they have been aimed indiscriminately at Mr. Smith and every other member of the Legislature. There have been no exceptions in this wholesale abuse of the last Legislature. If THE TRIBUNE was honest, why does it not particularize and discriminate? There were scores of Republicans who voted *against* all those measures denounced as venal and corrupt, and yet they are all included in the anathemas of THE TRIBUNE."

Every careful reader of THE TRIBUNE knows how unjust, how essentially false, are the material portions of the above. Time and again have we urged that very discrimination which *The Democrat* accuses us of ignoring—time and again have we explained that no Legislature ever contained more upright and worthy members than our last. Messrs. BELL, MURPHY, MANIERRE, and others in the Senate—Messrs. LUCIUS ROBINSON, CONKLING, FLAGLER, &c., in the House—forming about half the Republicans in either branch—were as honest and faithful legislators as our State ever had; and this we have repeatedly asserted and proved by their acts. There was a very different lot of Republicans, however, forming nearly half of those elected, who conspired with seven-eighths to nine-tenths of the Democrats to pass some of the most corrupt and unjustifiable acts that ever were put through a Legislature, as our columns have likewise repeatedly shown. That Mr. Session's name appears habitually in this latter category, we deeply regret; but the fault is entirely his own. There may have been fools in that Legislature who voted wrongly because they knew no better: but *he* is not one of these.

—As we are challenged for specifications, with the cool assertion that there was "the usual amount of Legislative corruption at Albany last Winter," we will merely premise that, if that was but "the usual amount," it is high time that it should be rendered *unusual*, and this, by the blessing of God and with the help of the People, we mean to secure. To this end, let us once more proceed to discriminations and specifications.

—We fear it is true that some "Legislative corruption" is "usual" at Albany and at other capitals; but has it ever before proceeded to such extent that a Governor has felt constrained to veto in succession half a dozen of the principal measures of a Legislature wherein his political friends had a majority? We can recollect but two instances of this—one in Pennsylvania, when Gov. Snyder was compelled to resort to the extremity of dissolving the Legislature, to prevent the corrupt passage of a lot of Bank charters; and one in our own State, wherein Gov. Tompkins had to do substantially the same. In either case, public sentiment almost unanimously condemned the Legislative majority and sustained the Governor—as we are sure it does now. So much for what is "usual" in this line.

Now for a "specification"—and the first that comes to hand will serve the purpose:

Gov. Morgan, in his Annual Message, recommended the chartering of more Horse Railroads in our city, and briefly indicated the main objects which should be held in view in framing those charters. The charters were framed and the bills passed; but the stipulations in behalf of the city which he had urged were totally disregarded. The leading advocates of these charters were personally apprized by him that the charters must be modified in accordance with his original suggestions; but his suggestions were still defied, and the bills passed in the teeth of his remonstrances. He could of course do no otherwise than veto them; so he did it; and here is the Special Message stating his reasons:

STATE OF NEW-YORK, EXECUTIVE DEPARTMENT, }
ALBANY, April 16, 1860. }

To the Assembly:

I return to the Assembly, in which they originated, the following bills, authorizing the construction of Railroads in the streets of the City of New-York:

"An act to authorize the construction of a Railroad in Avenue D, East Broadway, and other streets and avenues of the City of New-York."

"An act to authorize the construction of a Railroad track on South, West, and other streets in the City of New-York."

"An act to authorize the construction of a Railroad in Seventh avenue, and in certain other streets and avenues of the City of New-York."

"An act to authorize the construction of a Railroad in Tenth avenue, Forty-second street, and certain other avenues and streets of the City of New-York."

"An act to authorize the construction of a Railroad in Fourteenth street and other streets and avenues of the City of New-York."

No person appreciates more fully than myself the utility of railroads as a medium of communication between distant sections of a great city.

In the conviction that greater facilities in this respect were required in New-York, I took occasion, in my annual Message, to advert to this necessity, and to recommend "that the number of railroads in the upper part of the city be increased," and took occasion in this connection to add: "In doing this, however, care should be taken, while limiting and equalizing the rates of fare on all railroads in that city, to render the valuable franchise a source of income to the city." It was obvious, therefore, to the Legislature, from these declarations, that all which was necessary to secure my approval of the additional railroad facilities required by the interests of the citizens of New-York was, that the grants for this purpose which might be made should impose suitable conditions, in view of the valuable franchises granted, should guard against the abuse of the privileges conferred, and should require the services to be performed at the least cost to the public consistent with the obligations imposed. It is because the bills before me fail to embody these essential provisions, and are deficient in other respects of those safeguards which I deem necessary to the protection of the public interests, that I am constrained to withhold my signature from the bills herewith returned. That the privileges proposed to be conferred in these acts are deemed of great pecuniary value, needs no other elucidation than the fact that responsible individuals stand ready to pay a large bonus into the treasury of the City of New-York for the franchises conferred upon the persons named in these bills, without cost or equivalent.

I deemed some return to the city simply equitable, because the streets have been opened, graded, and rendered ready for the reception of the rails proposed to be laid down, at the expense of the property-holders, and that a suitable payment into the City Treasury would, to that extent alleviate the burden of taxation which presses so heavily upon its citizens. Or, if this method were deemed objectionable, it would have contented me had the bill in question so reduced the fares for the transportation of passengers, so as to have proved a veritable benefit to the humbler classes of citizens who are driven far from the centers of business by the high rents prevalent in the more accessible districts of the city. In this respect, also, the bills before me fail to conform to the intimations contained in my annual message. While it is notorious that the profits of the existing railroads in the City of New-York are vastly disproportioned to the amount of capital actually invested the roads now proposed are allowed to conform to the prices for the transportation of passengers charged by those already in operation, without any other restriction or reduction.

Again, the bills to which I am constrained to interpose my objections, are grants of power in perpetuity. Ordinary prudence would suggest that this should be avoided. Powers that are useful to day, under the changing circumstances of communities, and of municipal operations, may a few years hence, become objectionable. Hence it is that the exclusive benefits of patents are limited: the existence of corporations circumscribed within certain periods; ferry franchises defined and restricted. The whole genius of our Government requires, that privileges granted, especially those of pecuniary value, or affecting the public convenience, shall, after a certain time, cease, and the power of revision and amendment be exercised in accordance with the requirements of public interest.

But the privileges conferred in these acts, authorizing in some cases the entire engrossment of streets, are without limitation: and if, at any future time, the use of these public avenues should be demanded for other purposes, there is no determinate period to which the inhabitants or corporate authorities could look for a cessation of the privileges now granted. Nor is there any power reserved on the part of the Legislature to alter, modify, or repeal these grants, however flagrant shall be the abuses which may grow up under them.

It is perfectly evident that the Governor is no lawyer, or he would have never made that remark.

Nor is there any provision in these bills prescribing a time within which the proposed railroads shall be constructed.

Nor is he a Constitutional lawyer or he would never have made that remark.

Secure in the privileges conferred, the parties in interest may delay action to such time as their own convenience shall be best subserved. In the mean time the immunities granted may be the subject of constant barter and sale, without the slightest accruing advantage to the public. Equally deficient are they in requirements as to the time and manner in which the cars shall run,

of the distance to which a car, when started, shall proceed. Running in zigzag directions, it is in the power of the several companies to break their connections at short intervals; and thus, instead of carrying a passenger the whole distance he may wish to proceed, compel him to pay two or more fares before reaching the desired point.

An objection more flagrant than any in which I have adverted, is the utter want of responsibility which pertains to these associations. They are not required to file any articles of association, and within a month after organization the public may be entirely at a loss to know who are the parties in interest. Being without a corporate name and without corporate responsibility prosecutions could only be maintained against individuals and these, with no accessible public record to exhibit either their names, residence, or interests, might prove altogether intangible. And, as if his immunity were not sufficient, the bills before me, violating all just precedent provide that suits for damage or demand be brought exclusively in the Courts of the First Judicial District.

The Governor had not read the bill or he would not have said that nor had he read the Constitution either. He has not quoted the bill correctly; nor does he state the effect of it properly:

Thus while the persons upon whom these privileges are conferred in these acts are residents of various sections of the State, litigants are compelled to resort for redress to the City of New-York, no matter what may be the circumstances of the case, or how onerous the burden thus imposed. That this is a flagrant departure from the principles and practice which govern ordinary legal controversies cannot be questioned.

I have thus briefly stated my objections to these measures, drawn from the inherent defects manifest in the bills themselves. They are in my judgment of so grave a character, and so clearly calculated to destroy the utility of the measures proposed that I cannot consent to become a party to their enactment. Sincerely do I deprecate the want of additional railroad facilities in the city, with whose interest, social, civil and commercial I have long been connected. But I cannot consent to the sacrifice of permanent interests for temporary advantages. The measures thus objected to are, in their present shape, at variance with justice and sound policy; not in consonance with the wishes, or the wants of the great mass of those for whose benefit they are professedly designed, and being deficient in those legislative safeguards which should mark wise and discriminating legislation, my only alternative lies in the exercise of my constitutional prerogative, and I therefore return them severally without my signature.

E. D. MORGAN.

We have not a word to add. The man of decent understanding who reads this Message understands the whole case—he cannot but understand it. There is no question as to chartering the Roads—the only question is "Shall they be chartered in the interest (primarily) of the community? or solely in the interest of the corporators?" That question the Legislature proceeded to answer by passing the bill over the Governor's veto by the following vote:

[Here follow the name of all those who voted on the Bill.]

—There were four or five other bills so passed, vetoed, and repassed over the vetoes, involving similar questions and interests, and passed by nearly the same votes [for which see DAILY TRIBUNE of August 7]. It is unnecessary here to recapitulate them. The above is a fair sample of the whole.

Now, it is possible that there were simpletons in the Senate or Assembly who voted Yea above because they knew no better; and such should be kept carefully away from such dangerous spots as Albany ever more. Their naturally anxious mothers should never allow them to go out without sending some one along to tell them and show them how to come in when it rains. But the great body of the Yeas in the above and on similar divisions were bought—simply, nakedly bought and paid for with cash in hand, or the promise of profitable interests in the corporations thus chartered; and a good many of them have been down here since the adjournment, looking sharply after their pay. Others, more circumspect, have only sent. The whole matter is just as notorious in well-informed circles as the negotiations for "Fusion" between the Bell, Douglass, and Breckinridge factions.

The People will do just as they see fit about re-electing or otherwise honoring the men who voted to override the Governor's Vetoes as aforesaid. Our duty in the premises is done when we say that if any one of these unfaithful legislators, no matter of what party, shall be re-elected or otherwise white-

washed by a popular vote, it will be done without our aid and against our most earnest remonstrance. And here we rest.

Mr. Marsh then offered in evidence a copy of THE TRIBUNE dated Oct. 23, 1863.

Mr. Porter objected, on the same ground as before, for defendant.

Objection overruled. Exception for defendant.

Mr. Porter—I must insist that the gentleman read without interpolating. He read the Governor's Message so that we could scarcely tell which was the Governor's and which the counsel.

Mr. Marsh—Well, if I did not speak better law than the Governor did, I should be ashamed to belong to the bar.

The Court suggested that the counsel better confine himself strictly to the reading.

Mr. Marsh then proceeded to read, as follows:

MR. D. C. LITTLEJOHN--THE TIMES--GOV. SEW- ARD.

POLITICS IN OSWEGO COUNTY.

Correspondence of the N. Y. Times.

OSWEGO, Saturday, Oct. 20, 1860.

The Republicans are thoroughly wide-awake in this section of the State. A good deal of feeling has been excited by the decree issued by Mr. Greeley of your city, that Speaker Littlejohn must not be returned to the State Assembly. This impertinence in local affairs is resented as an interference, and the reason given for it is regarded as an insult. There is no man in this community who enjoys a higher character for personal integrity than Mr. Littlejohn, and the charge of corruption that Mr. Greeley has made against him is treated with contempt.

There was a very large meeting of the Republicans held here last night, at which, after a speech of an hour and a half on National politics, by Ex-Lieut. Gov. H. J. Raymond of your city, Mr. Littlejohn discussed the State legislation of last Winter, and especially the New-York railroad bills and other measures to which exception had been taken. He handled Mr. Greeley without gloves—branding him as a calumniator, and as stabbing private character for the sake of attaining political purposes of his own. He asserted in the broadest and most emphatic manner, that he had never profited, nor expected to profit, to the extent of a farthing, from any action he ever took as a legislator upon any public question whatever, and challenged contradiction from any quarter.

Mr. Brown, the vigorous and independent editor of *The Oswego Times*, has written a letter to Mr. Greeley, handling the philosopher very much as he handles other people. The public feeling here is very decided and bitter against Mr. Greeley's course.

The Republican majority in this county will be larger than ever before. Nobody here, of any party, looks for less than 50,000 Lincoln majority in the State. The Fusion has hurt the opposition very seriously all through this section. Littlejohn will be re-elected by not less than 1,000 majority.

POLITICS IN CENTRAL NEW-YORK--ONONDAGA COUNTY.

Correspondence of the N. Y. Times.

SYRACUSE, Saturday, Oct. 20, 1860.

The political canvass is very vigorously conducted in this county. The Republicans have the advantage very decidedly over their opponents in organization, in union, and in enthusiasm. Their meetings are frequent and large, and indicate unmistakably the popularity of their cause. This is one of the most decidedly Anti-Slavery counties in the State, yet the feeling of the Republicans is decidedly conservative, and no one expects or desires that Mr. Lincoln's handling of interference with Slavery or with the constitutional rights of the Slave States. The threats of disunion produce not the slightest effect upon any body.

Mr. Yancy spoke here a few evenings since to a large audience, made up of men of all parties. He was exceedingly guarded in his remarks, aiming to show that the North would reap most profit from allowing Slavery to extend and increase. Personally he produced a favorable impression; but the political effect of his speech will be to swell the Republican vote.

Mr. Greeley has been in the county making Lincoln speeches. The principal object of his visit, however, seems to have been to look after the Republican Members of Assembly, in whose preferences for United States Senator he takes a very marked and peculiar interest. He made no speech in this place, but held a secret conference yesterday with some ten or fifteen Republicans who are hostile to the re-election of Mr. Seward and are endeavoring to defeat the Republican candidate for the Assembly. The corruptions of last Winter's Legislature afford the ostensible ground for this hostility. This county will give a much larger Republican majority than ever before.

The foregoing bulletins appear conspicuously in yesterday's *Times*. In so far as they indicate the perfect affiliation of its editor with the Littlejohn and Myers school of politicians, they require no remark. Every man's right to choose his own com-

pany and keep it, shall at all times be freely upheld in this journal.

Mr. Littlejohn's "handling Mr. Greeley without gloves," "branding him as a calumniator, and as stabbing private character for the sake of attaining political purposes of his own," &c., is all in the way of business. I have a "political purpose" to subvert the premises; and that is to purify the legislation of our State from influences and operations which have rendered it a terror to tax-payers, and a stench in the nostrils of honest men. Believing this sort of legislation to be every way wrong and ruinous, I mean to expel it from the State, or at all events from the Republican party. If the Democrats see fit, as they have done in Saratoga County, not only to renominate their own corruptionists, but to take up and try to reflect those whom popular indignation at their misdeeds has driven from our party, I believe it will be the worse for them. At all events, I shall do what appears to be clearly right, "in the faith that Right makes Might."

Is it not beautifully cool, this talk of my opposition to the re-election of the tools of the City Railroad jobbers as "impertinence in local affairs?" When Mr. Littlejohn descended from the Speaker's Chair last Winter to urge the Assembly to override a New York City Governor's veto of five bills proposing to gridiron the streets of this City for the benefit of jobbers scattered all over the State, was not that "an interference" in "local affairs?" Did he not know that our Municipal authorities and our Press all but unanimously protested against the passing of those bills in the shape objected to by Gov. Morgan? "Local affairs," eh? Does not Mr. Littlejohn know that it is the general scope and influence of such legislation as that we are now considering—with the fact that the Republican party is implicated in and damaged by it—that has precluded the running again of nearly all his coadjutors in the objectionable legislation of last Winter, and will defeat a good portion of those who have engineered a renomination?

But we are told that "there is no man in this community [Oswego] who enjoys a higher character for personal integrity than Mr. Littlejohn." Every community of course erects and graduates its own standards of integrity, and there is no objection, so long as it does not attempt to thrust them on other people. When I was in Chicago —

Mr. Marsh—I am reading the wrong paper! This is an article on which we have another libel suit pending. Mr. Porter insisted that the whole article should be read.

Mr. Marsh declined; the gentleman might read it, if he chose to put it in evidence. I will withdraw it entirely.

The Court decided it might be withdrawn.

Exception taken for defendant, on the ground that the plaintiff had no right to withdraw a paper thus partially read.

Plaintiff rested. Adjourned.

TUESDAY, Sept. 10.

OPENING FOR THE DEFENSE.

Mr. WILLIAMS said: If your Honor please, the plaintiff having offered no proof to take this case out of the doctrine of a privileged communication, we insist that a cause of action is not made out on the part of the plaintiff. I understood the counsel on the other side to put their claim to open the case upon the authority of the case of Fry and Bennett, which was to the effect that where the plaintiff must give affirmative proof of malice, he is entitled to the opening. To that we accede, as a proposition. The plaintiff took the case, as we supposed, to give proof of malice. We insist he has given no such proof thus far—we therefore move that the complaint be dismissed. We also move that the complaint be dismissed upon the additional ground, that upon the face of the article itself, it is by

law a privileged communication, and therefore not libelous. And we also insist, that upon a fair construction of the words of the publication, it contains no libelous charge against the plaintiff personally, but is only a fair criticism upon the public acts of the plaintiff. We say it is a privileged communication, and then we say, whether privileged or not, there is no charge contained in the words used that is libelous of itself.

THE COURT—I will rule first that it is not a privileged communication, and second that the terms of the publication do import a libelous charge personally upon the plaintiff, and, therefore, it is libelous as to him.

Exception taken for defendant to each of these propositions.

Court adjourned to Wednesday.

WEDNESDAY, Sept 11, 1861.

MR. WILLIAMS'S OPENING FOR DEFENSE.

MR. WILLIAMS, in opening for the defense, said: May it please the Court, gentlemen of the jury; it now becomes my duty on the part of the defendant to state to you the nature and character of the defense, and the substance of what we expect to prove, and so to state it that you may be able if possible (as the testimony goes on, step by step) to apply it to the case yourselves, and to fully appreciate its bearing. It is undoubtedly the duty of the counsel who sums up the case, to explain the bearing of the testimony upon the various points of the case. It is, however, well enough for the counsel in opening to endeavor to relieve this duty as much as possible; and it conduces to a better understanding of the testimony, especially if it be of an intricate and circumstantial character, fully to explain it so that the jury may comprehend it and apply it to the case as the testimony proceeds.

You have heard, gentlemen, from the counsel for the plaintiff something of the nature of the case; he has told you that it was an action for libel, brought by Mr. Littlejohn, a member of the House of Representatives of this State and the Speaker of that House, against Mr. Horace Greeley of the County of Westchester, one of the editors of THE TRIBUNE newspaper, for an article that appeared in that newspaper on the 26th of September last. Mr. Littlejohn, he told you, at that time was a candidate for reelection to the Assembly from the 1st Assembly District of Oswego County. And while he was so a candidate, he has told you, that Mr. Littlejohn was bitterly and violently assailed in his personal character by an article published in THE TRIBUNE.

The counsel commented upon it at some length and they have given some evidence which I suppose will be claimed to be evidence of malice on the part of Mr. Greeley in the publication of the article complained of. The learned counsel spent a few moments of his time in speaking of his client. With the private character of his client, gentlemen I beg leave to say here in the outset, in my judgment we have nothing to do—we have nothing to do whatever with the private character of Mr. Littlejohn. That has not been assailed in THE TRIBUNE newspaper in any way or in any form as I understand the meaning of the article complained of. Whatever of good name Mr. Littlejohn may have as to his private character as a citizen in your midst we are here without any motive to assail it—we don't propose to assail it. Whatever may be his domestic virtues, however strongly may be attached to him his personal friends and followers, we have not one word to say of that. We would not abate the tithes of a hair from any good name he may have won in this community by private and domestic virtues. The learned counsel also commented in his opening upon the character of the defendant. I thought the gentleman went aside a little—I think a little unprofessionally aside—to say something derogatory of the defendant. He spoke of his being a lobby

member of the Legislature and of his having received a bribe while a member of Congress.

MR. MARSH—I did not say he received a bribe; I said he was charged with it.

MR. WILLIAMS—I thought it a little unprofessional, because Mr. Greeley's character is not on trial here. The learned counsel told you that Mr. Littlejohn's character was on trial here. He certainly will not pretend that Mr. Greeley's is. If he expect to get a verdict for damages, his damages look in some sense to an indemnity for what he has suffered. You know that if a man without character traduces you, it does you but little harm; if a man who takes bribes libels you, it is comparatively harmless; but if a man, lofty in character, and pure in motives, assails you, it does you more harm.

It was scarcely in the way of the counsel, yet I do not complain of it if the counsel thought it his duty; but I am not here to vindicate Horace Greeley, nor apologize for or palliate any act of his life. He needs no apology, no palliation, no vindication, from me or from any other living man! That I feel, and I leave it there. It is not unprofessional, gentlemen, for counsel to assail the character of their antagonists when it become a part of their case, or when it becomes in any view important they should do so. You know that we lawyers, when we get up before a Jury, are privileged men. I can say things about Mr. Littlejohn, for instance, here before you, and, if pertinent to the case, the law will protect me, which, if I said in the street, I might be liable to an action for damages—perhaps to imprisonment—for saying. I do not complain that character should be assailed when it is necessary to do so; but when it is not in any sense necessary I have observed that the better part of the profession avoid it, and I have thought it right to say thus much to you, because there is always something due to decorum which may not safely be withheld.

The learned counsel told you, gentlemen, that, when Mr. Littlejohn was a candidate for election to the Assembly from the First Assembly District in Oswego County, an article appeared in THE TRIBUNE newspaper, which charged him with corruption as a legislator. The words were these:

"A correspondent earnestly inquires our opinion concerning the nomination for members of the Legislature of D. C. Littlejohn at Oswego, and of Austin Myers at Syracuse. On this subject our opinion has been so often expressed that it cannot be in doubt. Both these persons were prominent in the corrupt legislation of last Winter. Accordingly, both of them ought now to be defeated. Or, if they must be sent back to pursue their career at Albany, it should not be the work of Republican voters."

That is the whole of the article! It is for publishing that article, or for its being published in THE TRIBUNE newspaper, that we are here to-day. Gentlemen, it will be a part of our case undoubtedly, under the ruling of the learned Judge, to show that Mr. Greeley had no malice against Mr. Littlejohn. I do not think the article on its face implies malice. As I understand it, Gentlemen, Mr. Littlejohn and Mr. Greeley had known each other for several years—perhaps for many years. There had never been, so far as I am informed, the slightest misunderstanding between these gentlemen—not the slightest feeling whatever of any character unkind or unpleasant in its nature. I don't think that it will be pretended that up to the publication of this article, anything ever appeared in THE TRIBUNE newspaper, or fell from Mr. Greeley's lips, in the least degree unkind toward Mr. Littlejohn. He had no malice. But he tells you on the face of this paper, what he did think; and he tells you more emphatically in the article which the learned counsel read in evidence—more emphatically, all the reasons why he published this article, and why he was opposed to the election of Mr. Littlejohn. He says, "on this subject, our opinion has been so often expressed, that it cannot be in doubt." How expressed? The plaintiff's counsel read to you last night from THE TRIBUNE the

expressions here referred to. It had been expressed by saying through the columns of that journal that there were measures, acts, laws, passed by the Legislature of 1860, that were corrupt, and no man who voted for them ought to be returned to the Legislature again; and he printed the names of every man voting *pro and con*—Democrats and Republicans—without the slightest shadow of a distinction of party, or favor of person, from beginning to end; and he said that *none* of these men ought ever to be returned to the Legislature. And when he is inquired of again by the correspondent, he says: "Our opinion on this subject," that is, our opinion on the subject of returning any of the members who voted for the corrupt measures of last Winter, "has been expressed," and they read to you last night the expression of it referred to. And, in the light of this, you see the motive, and the whole motive, that actuated the publication of this article. Mr. Greeley did believe, and he believed it in common with almost every intelligent citizen of the State of New-York, that the measures in question were passed by corrupt and corrupting influences, which made it corrupt legislation. He believed that! And he thought that the purity of the Legislative body was a consideration higher and more important than party success, and therefore he said, *all* the men, of whatever party, who voted for these measures, ought not again to be returned to the Legislature. He came to believe this as other men came to believe it—as, perhaps, some of you, as hundreds within the hearing of my voice, came to believe it. Was Mr. Greeley at Albany during the session of that Legislature? Not an hour. Was he present when any of the corrupt influences were brought to bear upon any member of the Legislature? Why, if he had been going to do anything of that kind, Horace Greeley is the last man on the face of this round globe that would have been invited to the interview! How did he come to believe this? Just as other men came to believe it—from the almost universal expression of opinion; from the unanimous voice, as well of individuals as of the public press; by the voice of the Governor, through his veto message; from the voice of Greene C. Bronson, speaking in the West Washington Market case; from the voice of John McKeon, speaking in the same case; from the voice of Wm. Curtis Noyes, speaking in the same case—all good men and true. Could Horace Greeley doubt it? Read for yourselves but one-tenth part of the bundle of scraps cut from different newspapers of all parties from one end of the State to the other, which I now hold in my hand, and *could* you doubt it? It is an old saying that "what everybody says must be true," and there is much good sense in the adage.

Gentlemen, you were told in the opening that THE TRIBUNE newspaper was the only paper that complained of this—that THE TRIBUNE alone assailed Mr. Littlejohn, and that it was vindictive in its tone and in its spirit. They have given you all the evidence they are at liberty now to give; all the evidence they have got, or could get, tending to show that Mr. Greeley was actuated by vindictive or malicious motives. But whether or not Mr. Greeley was actuated by malicious motives, I assert, and will prove if it is disputed, that it was, and has been, the universal voice of the press of the State of New-York from the day these measures were passed, and the fact was known to the community that they had passed; up to this very hour it was, and is, the universal voice of the press of the State of New-York that the measures in question were corrupt, that the acts were disgraceful, that the legislators were corrupt men, disgraceful to themselves, disgraceful to the State, a hissing and a by-word among men, and to go down forever as a hissing and a by-word. If Mr. Greeley or THE TRIBUNE fell into an error on this point, it was the common error of the press everywhere. Gentlemen, the press has some duties and some rights. When you take up a newspaper, or go to

buy a newspaper for two, three, or five cents, as the case may be, and there are two newspapers at the same stall, you take that which has the most news in it. By that very act you approve of putting all the news into the newspaper that can be found. You want that newspaper that tells you the most news. If a man is fit for his place as a newspaper editor, he is a man who obtains all the news he can—all the information, and all the instruction for the people that he is able to obtain; for these newspapers are in some sense our schoolmasters in this Republican country, to bring us to the knowledge of what it is important for us to know, in order to preserve our Government and retain our liberties. I say a man who assumes these functions, has a duty to perform. You know, gentlemen, that a common carrier has a duty to perform to the public. If you take an article to the common carrier who plies his calling upon the Lakes or elsewhere, and he refuses to carry it, you sue him for it, and compel him to take it, if it be within his capacity to do so; because the law recognizes his calling, and makes it his duty, as far as possible, to exercise that calling for the best interests of the public. So it is with a tavern-keeper, and a score of other callings which I might name. And this is true of a newspaper editor. He ought to tell you the news, and let you know what is going on. He ought to enlighten you; if the foe lurks in ambush, let him tell us of it, and we will be on our guard. If the foe to our liberties, our rights, our interests, lies in wait for us, let the newspaper tell us of it. If the foe is approaching, give the alarm. Don't stop to get absolute proof of it, or he is upon us before we can guard the gate. The editor should inform, according to the best of his knowledge and belief, concerning the subject. The community needs often to be roused, and to be told of the stealthy approach of the enemy, the suspected approach of the enemy, if you please. That is the duty of the newspaper editor. He is bound to do so if a true man and a lover of his country and his fellow-men; and he will do it, though he be called into court to answer for libels never so often. If he has a duty to the public, paramount to his duty to himself, he will, if he is a true man, sacrifice self-interest for the public good. If these measures were corrupt the people ought to know it, and ought to be guarded against them and the repetition of acts of similar corruption. Gentlemen, there was an inquiry made by a correspondent of THE TRIBUNE, desiring to know whether that journal would support for re-election the men who had voted for this corrupt legislation, saying that two of them, Mr. Myers of Syracuse and Mr. Littlejohn of Oswego, were renominated, and demanding to know if THE TRIBUNE was going to support these men? We want to know, said these inquirers, because THE TRIBUNE is an influential paper and believes that purity is above party. "What has that paper to do with the people of Oswego?" Why, the paper circulates there and many people believe that it tells the truth; and it is bound to speak out. If silent it may mislead these people. They look into the columns of THE TRIBUNE to see what Mr. Greeley thinks of the matter. They want to know what Mr. Littlejohn is, and whether they ought to send him back or not. They think the newspapers bound to tell them one way or the other. That is what the inquirer and the people of Oswego in effect said to this paper. Suppose the editor of that newspaper had kept silent on the subject? He misleads these people, don't he? They wrote to him for information and enlightenment on the subject, and if he is a true man he will enlighten them. If he cares for the interest of party alone he will not enlighten them; but if he cares more for the interest of good morals and of good government he will enlighten them, though it rend the party in twain. That is our case and our view of it.

That corrupt legislation of last Winter! What do I say? "The corrupt legislation of last Winter!" You

have heard the expression a thousand times! It is notorious! You say "a man," but when you mean a particular man, you say "*the man*." Everybody knows what you mean. The legislation was notorious! Nothing could be more so. From the 17th of April, 1860, up to this hour, more political nominations have turned upon that than upon any other one thing probably that ever occurred in the whole history of the State of New-York. I remind you of the Chicago Convention; did not that turn upon this question of the corrupt legislation of last Winter? You know whether it did or not. You heard men stumping the State last Autumn, making this the theme and almost the only theme, of political persuasion and of political discussion. You remember that Senator Spinola, a Brooklyn Democrat, traveled the whole State over, and throughout the State of Maine and elsewhere. I happened to meet him in Maine myself—giving everywhere as a reason why the now President of the United States should not be elected—that this legislation was so corrupt, making this the great argument against the Republican party; and this had to be met everywhere. If Mr. Greeley had omitted to come forward and take the ground he took in the article in question he would have been recreant to his party, recreant to his trust. The learned Counsel told you that this legislation met with no rebuke. Why, gentlemen, he told you that Mr. Littlejohn was re-elected from the First Assembly District of Oswego, and sent back to Albany, and that he was re-elected to the Speakership again, without one word of reprobation upon that subject. Gentlemen, the very caucus that nominated Mr. Littlejohn for the Speakership last January passed strong condemnatory resolutions of the corrupt legislation of the preceding Winter, and of which Mr. Littlejohn said to those around him, "he hoped the resolution would be unanimously adopted." Here it is:

Whereas, Certain measures at the last session of the Legislature were vetoed by the Governor, and subsequently passed over his vetoes; and

Whereas, The people at the last election condemned these measures, and sustained the vetoes of the Governor; therefore,

Be it Resolved, That the Republican members of the Assembly will, in their official capacity, sustain the principles set forth in the veto message of the Governor, and faithfully carry out the decision of the people as expressed at the last election.

Can you have anything more condemnatory than that? The counsel told you that no remonstrances were sent up against these bills. Why, gentlemen, the name of the remonstrances that were sent up was legion! But how idle! I will endeavor to show you why it would have done no good to have filled the Capitol with remonstrances against these measures.

Gentlemen, this case divides itself naturally as it already occurred to you, I am sure, into two distinct heads. First, Was there corrupt legislation during the Winter of 1860? Second, Was Mr. Littlejohn prominent in that corrupt legislation? Now, gentlemen, it used to be said in old times that "the greater the truth the greater the libel;" but those times are long gone by; though even in those old times this maxim was never applied to the case of a civil action brought for damages. It only applied to cases of indictment. It has always been true that the truth of libel was a perfect defense in a civil action; and, in this State, it is made a perfect defense against indictment by the Constitution.

It is a perfect defense if we show that what we have said to be true. Now, you will observe we have charged two things: First, there was corrupt legislation during the Winter of 1860; second, that Mr. Littlejohn was prominent in that corrupt legislation. We shall prove the first of these propositions, I think, to your satisfaction. We will put this branch of the case beyond the possibility of a doubt. Now, let me proceed to show you the nature of this proof, and confine your attention to a critical and minute examination of the nature and character of this proof. You see at a

glance, it cannot be direct proof. You know that if a man is going to commit a crime, he never invites two or three good honest men to go along and see him do it—never! never! All malefactors are convicted, if convicted at all, in almost every instance upon circumstantial evidence. A man who is to do a wrong deed goes alone and in silence, he invites no scrutiny and no observation. He knows, perhaps, that there is one eye upon him—the eye above—and he means there shall be no other. He is brave toward Heaven, but he is cowardly toward man. You see at a glance that the proof we have to give you must be circumstantial. If you were going to get the Legislature to give you, or to a number of you, a million of dollars, you would at once perceive that you had got to approach the subject velvet-footed. You would find it for your interest to wear a sate and perhaps a saddened face, an air of modesty and quiet, which would not subject you to scrutiny. You never would be seen talking with anybody of a suspicious character; you would never talk with anybody who would *peach* upon you; you would cover up your footsteps as carefully as possible. That is this case, isn't it? You see we have circumstantial evidence, and can have nothing else. If we had direct evidence, it would be almost a suspicious circumstance—for it would tend to impeach the ability with which the scheme should have been concocted. We are charging something pretty broad. It rests upon the shoulders of a good many men, no doubt, and these men who are implicated in it are just as guilty one as the other. It is very hard to prove guilt by guilt's own instruments. We shall call witnesses, gentlemen, with whom we cannot converse and say—"What can we prove by you?" They won't tell us. We have got to call these men and get from them such circumstances as are calculated to convince you morally that this legislation of the Winter of 1860 was corrupt. Mr. Littlejohn may be literally accurate in many of his statements; I could put my hand upon a good many of his printed statements within the last year where he says "I never took a cent directly or indirectly, for my vote or my influence in the Legislature." Whether he did or not is not material here. That is not necessary in any sense to establish our defense. Whether he did take bribes or not is not a matter we are going to inquire into particularly. We don't care much about that. We are going to show that the legislation was corrupt and that he was prominent in that legislation. What is the word "prominent!" That it is more difficult to convict Mr. Littlejohn of this, than to convict perhaps most of the members who were prominent in the Legislature, you may well imagine. He was the Speaker of the House; he was a very influential man with that Legislature, if control over their votes is evidence of influence. He was prominent; he could come down from the Speaker's chair and address the House with great effect. He is a good speaker—an effective debater. He could carry almost any measure he saw fit, and it was important to have just such a man in just that place; and of all men connected with the whole matter, he must be kept above suspicion—like the chaste lady in the Masque, "lofty, spotless, and serene," not even to be chatted at, but only pointed out and grinned at by those satyrs and goblins of the Legislature—the Lobby. He must be a man who never repents, whose heart has no softening toward corruption, and who must never lend a pitying ear to the ravens of the Lobby when they cry for bread. That was a part of the programme, and that was admirably carried out by one whom I will denominate the Father of the Lobby, and who had, in the person of Mr. Littlejohn, one whom I may denominate his fondest and best beloved son. Now, under these circumstances, Gentlemen, how do you suppose we can prove Mr.

Littlejohn's connection with this matter? On the other side, they have told us that we cannot prove it; the learned counsel told us in the opening that we could not look into the recesses of his heart and see the motives he had; it was his boast that we could not look into that. Gentlemen, we shall prove it by circumstantial evidence, evidence by which almost every other crime is proven. *We shall prove it*; and when that is proved, you will agree with me that the task of proving that Mr. Littlejohn was prominent in it is very slight. I don't think that will be denied.

Now, gentlemen, we have named in our answer those acts which are generally denominated the New-York railroad acts, four or five of them, and what is called the Taylor and Brennan or "West Washington Market bill," of which the learned counsel spoke last night. We have specified these; we might have named many more; might name the Brooklyn Ferry bill, to pass which the Common Council of the City of Brooklyn appropriated \$20,000. But let that pass. It is important, in this view, to ask how came the Common Council of Brooklyn to appropriate \$20,000 to get that measure passed. As you pass over to Brooklyn you pay two cents ferrisage, and they thought it too much; they thought they ought to pay only one cent, and sought to obtain the passage of an act to effect it. A great many people pass over these ferries, perhaps a million daily. How many members of the Legislature were there? say 150; and you want 76 votes to pass a bill. But what did they want with \$20,000? To get 76 votes. These men who acted in Brooklyn were not fools; they appropriated it out of the Treasury, \$10,000 was spent, gone, from the Treasury of the city of Brooklyn forever! Where did it go to? What do you suppose made them do that, if they had not known that that was the way to get measures through that Legislature. And Mr. Greeley is arraigned before you, for having the same opinion. They backed their opinion with \$20,000. When a man bet \$20,000, you may know he has got a sure thing of it.

But their names are legion. I need not go over them. That Legislature was notoriously corrupt; Gov. Morgan stated openly that "eighty members of that Legislature took money for their votes." Mr. Littlejohn, in one of his speeches, said "that perhaps more members of that Legislature were open to improper influences than of any other former Legislature." Mr. Weed said: "God grant we may never look upon its like again." These measures, which we have denominated corrupt, and to which we mean principally to confine our proof, were, you remember, vetoed by the Governor, and they passed over the Governor's veto by a vote of two-thirds. Gentlemen, ever since Sturtevant was imprisoned in the City of New-York for a contempt of Court, for refusing, as an Alderman, to obey the injunction of the Court, in granting and giving rights to lay a railroad track on Broadway and other streets—from that moment until the 17th of April, 1860, there has been in this State a bevy of men who know that in these railroads there was a gold placer of inestimable value, and they have sought their game with their whole hearts. It never was achieved until that never-to-be-forgotten day, the 17th day of April, 1860, when the wish of their hearts was gratified, and they succeeded in the long-sought, laborious, carefully-studied, ingenious, cunning measure of taking out of the City of New-York—oh, I could say millions, but I must say more than can be counted by millions, something that cannot be valued by money. I will speak of that hereafter. The City of New-York, you know, is peculiar in its geographical structure. Unlike other great cities, it may be almost said to have length without breadth; it is nearly fifteen miles in length, and scarcely two in width. On the one side is the North River, and on the other winds the East River. At the lower part of the town most of the business is done; Wall street, the great money market of

this country, is, you know, far down in the lower part of the city. Men who do business down town live up town; men who do business in New-York like to live in the city, and I have sometimes thought it might almost be a duty to do so. If they do not live there, they cannot vote there. Where their property is, there they desire the rights of citizenship, and of voting for its protection. If they live there, they must, morning and evening, go up and return through this tunnel, if I may call it so, from their places of business to their homes. Some means of getting up and down quick is indispensable. Now there are the Third, Sixth, and Eighth Avenue Roads, which are the principal routes up and down. You may go up these roads in the morning and evening, and you will observe cars that will carry about 40 persons, if crowded close, with 70 seated or hanging on. As a general rule, between 8 and 10 o'clock in the morning the cars may be said to average from 60 to 70 passengers, some hanging on at the risk of personal safety. Omnibuses ply up and down, running on the same streets with the railroads, and you go into an omnibus when you cannot get into a car; otherwise you get up town the best way you can. We have felt this inconvenience for a great while; we have felt that there must be more railroads up and down the city; we have known that the Third and Sixth and Eighth Avenue Railroads, make nominally moderate dividends, perhaps 15 or 20 per cent on the money nominally invested, but a small part of which was ever actually invested as capital, for it is not well to tell the public that they are doubling their money every six months. Some of those boys in the Sixth Ward might not like to hear of their making profits so immensely large. But those who have been behind the scenes, as the Third Avenue Railroad, know that there never was anything so lucrative in this country as some of these roads. I have no doubt the money actually invested there doubles itself once every six months. They dispose of what it will not do publicly to divide, by measures judiciously concerted. All is well taken care of. The stock is owned by a few individuals. I believe Mr. Weed owns \$60,000 of it, and George Law the greater part of all the rest. These proportions may not be precisely correct. I only mention it incidentally. Now, gentlemen, we want these railroads; we have been laboring hard to get them for a good many years. The Governor, in his message, said that the people wanted them, and he is a citizen of New-York; and, although the learned counsel made some remarks about Gov. Morgan, which I thought a little out of place, for I believe in deference, as well as obedience, to magistrates. But I do not complain; seeing it was necessary he should say it. It has been said by Mr. Littlejohn that the message which was read to us virtually imputes corruption to every member of the Legislature. He *must* attack the Governor; there is no other way; the Governor's message stands between him and a verdict. He understood that. I do not complain of the attack, only I would speak with what respect I could of the Chief Magistrate of the State. I don't think it does any good to depreciate the officers of the Government before the public. Obedience to the law and deference to magistrates are cardinal virtues. They are the very palladium of liberty itself.

Now, gentlemen, I say we wanted these roads; we knew that the Third, Sixth, and Eighth avenues have five cents a piece for carrying passengers back and forth; and we know they made these immense amounts of money; and nobody knows better than that lobby, of which the counsel spoke last night when he charged Mr. Greeley with being a member of it, the immense value of these franchises. They have been trying from year to year to get these or similar bills through. In 1859 they succeeded in the House, and lost it in the Senate by only one or two votes. And when the Autumn of 1859 came round it became exceedingly important to arrange effectually to carry these measures.

It was known that the Legislature would be Republican when elected. Those gentlemen of the Lobby discovered that there was one glorious pretext to put forward to reach a class of men who were strong politicians, and who thought party was to be advanced a little over the head of some higher principles. They hit upon a plan for carrying it; it was worthy of its great author, the father of the Lobby. They said: "we propose now, that this Legislature pass these railroad bills, and out of these bills we will get the whole fund that we want to elect our President. We will get a million dollars out of these bills to spend in electing our President next Fall—in electing Mr. Seward if he should be nominated." That was one plan fixed upon. It seemed to them that the pretense was at least plausible, and that it might carry; consequently that was put forth for the ear of some. It had this tendency at least, to let the whole thing go into the hands of those who were the acknowledged leaders and managers of the party. If A. B. was one of the managers of the party, he says: "Now, C. D. cannot complain that I have a hand in this, for I act for the party." C. D. does consent that A. B. may manage it for the party. It was a good pretext at all events, and it had the effect to get it into the hands of the leaders of the party. Well, gentlemen, in the city of New-York, in the Autumn of 1859, this was the real though disguised issue upon which candidates for the Legislature were elected or defeated. You will observe there were various interests to be considered in this thing. The first was the corrupt Republican Lobby interest, which was disguised by the pretense of a party fund to elect Mr. Seward. The second was corrupt Democratic Lobby influence, which took the disguise of the stage monopoly.

There were men who had invested in New-York omnibus stage lines a very large amount of capital. If railroads are put on the same streets, they would drive the omnibuses off, and these men would sustain great loss—consequently they should be indemnified. That was plausible and well done, but it was simply a blind. There are three men who managed that. They were leaders at Tammany, and claimed to represent the stage interest. It was very wise, you see, to let the Democratic party or some of the leaders into this thing, so far as to have some hold upon the Democratic members, and one-third went to these men, under the pretense of the stage interest. But, Gentlemen, I think we shall show to you that the stage interest—the real men—never got a dollar. That was the second interest. Now, Mr. George Law, owning, as you know, a large interest in the railroad already, has an interest that would clearly be affected by any additional roads. For, there is the Sixth avenue road running along on one side of the Seventh avenue, and there is the Eighth avenue road running along the other side. Now, those who own on this Sixth or Eighth avenue railroad—if they can carry 70 passengers in one car, instead of 40, which is the full capacity of a car—they would be damaged by having competing a road put down in the Seventh avenue. That was clearly so. Now, Mr. Law and his party I will call the George Law interest—not meaning any disrespect to him, personally, at all—and I may say here I cannot stop in what I am saying, to apologize for every name I may mention. I mean no personal disrespect to anybody. I am telling you facts, and whosoever they hit, they must bear it—I cannot help it. Thus, you see that Mr. Law had really large interests here; he thought he had as large a stake in it as anybody, and I think so too. Mr. Law forced himself upon the other two interests—the corrupt Republican (called in New-York "the Machine Republicans") and the corrupt Democratic—not until he had circumvented them in the Senate, and had the majority of that body in his pocket—he had passed his "Gridiron bill" in the Senate and they were compelled to make

terms with him and take him in as an equal partner. From that time forth, George Law owned a third; the Republican lobby a third; the Democratic lobby the remaining third.

Let me just glance over this again. There were three interests; one I will call the New-York railroad monopoly, represented by Geo. Law (I might have called it by that name before, and avoided the use of Mr. Law's name); then the corrupt Democratic Lobby interest, and, third, the corrupt Republican Lobby interest. These three were the represented interests in these measures; and I think if we should strain matters a little, they would come down pretty nearly to be led by three men. Under this organization when a man came up for election from the City of New-York in the Fall of 1859 it became of considerable importance where he should be upon the great question. This programme was adopted. To illustrate—A. B. gets the nomination of the Republican party; he is felt of and found to be all right on the question. "Very well," says the Democratic interest, "let him be elected." Then C. D. gets a nomination in another district by the Democratic party. He is felt of and found all right—"Let him go in," say the Republican leaders. But here comes a man from the Republican side—"It won't do to trust; he is honest and true, don't trust him." So say these Republicans in secret—"We will let him be defeated; let the Democrat go in, he is safe." In that way they went through the city, though with immense labor; and they got almost every man in that city safe for them; and that is the reason why the learned counsel on the other side found last night that the New-York members nearly all went for these measures. That is the secret, and you may as well understand it, gentlemen, though perhaps at the expense of wearying you.

Well, gentlemen, we will say the members are now elected. "We have elected our men" chuckled the lobby, "out of the different parties; we have taken glorious good care of that little town of Syracuse; and we think we are tolerably safe on Oswego." It turned out they were entirely safe at Oswego. We will go up to Albany now. The Democratic and Republican interests are there at Albany; they are going to make sure work this time. Up to this time, you will recollect, there were but two parties to this scheme—the whole loots to be divided only by the figure 2.

"Brightly it sparkles to plunderer's eyes."

At first this thing seems to be going after all right. Mr. George Law, a man of great wealth, and of great ability—I speak what I know—discovers this plan. Now, says Mr. Law: "I am not going to let these fellows rob me." He goes up to Albany and goes to work in the Senate. In the Senate there are 32 members, and you know 17 of them would be sufficient for his purposes. Mr. Law went there with his money and his genius, his friends and his retainers; and got up what was called the "Gridiron Bill." Embracing all the feasible routes in the city and aggregating them into one bill, he got that through the Senate. You see then, that Mr. George Law has checkmated them; and done it very well, very cleverly. There must be a compromise now. It takes place, and Mr. George Law joins with the other two interests, and then they divide these into five measures—into five bills, putting in the names of persons satisfactory to these three great interests. Mr. Law, the Railroad interest. Mr. ———, well I won't mention his name, and his associates and followers, the Republican interest; and for the Democratic interest—I may as well call Peter B. Sweeney by name; for you know who I mean; he is Sachem of Tammany, a lawyer in New-York; was once Public Administrator; afterward District-Attorney, though he rarely if ever appeared in Court; I believe he was afterward Commissioner, appointed by the Speaker of the House,

to appraise Dr. Thompson's and other damages occasioned by the burning of the Quarantine property of Staten Island—though he was not a Republican nor a Know-Nothing, as I believe Mr. Littlejohn was when he first went to the Assembly.

Mr. FOSTER—Does the counsel mean to say that Mr. Sweeney was appointed by Mr. Littlejohn? He had better say Gov. Morgan, if he means to speak the truth.

Mr. WILLIAMS—I see they repel the imputation that Mr. Sweeney was appointed by Mr. Littlejohn. I shall be glad if they relieve themselves of that imputation. I hope it won't transpire during this trial that Mr. Littlejohn is in any *closer* connection with Mr. Sweeney than what I have indicated. I see they shrink from it. They had better shrink from it; they will be fortunate if they evade it. Though Mr. Law had this stupendous interest, his name does not appear on any of these bills. The corrupt leaders of the Republican party who had these millions of interest in these bills, observed the same caution: their names do not appear; but I think the name of Mr. Peter B. Sweeney and those of his two principal associates do appear. I don't know why they saw fit to take this risk, but they did. Perhaps they had not so trusty followers as the other interests had. Gentlemen, a good many years ago, when the old Democratic party was in existence—for although I never was a member of it, I cannot withhold the expression of my admiration of some characteristics that old party as it once was—a fierce war was, as you remember, waged upon corporations as dangerous monopolies. They were right! When the convention of 1846 came together, they provided by the fundamental law of the State that corporations thereafter created should forever be subject to legislative control, should be dissolved, their charters taken away, repealed or modified if the legislative power saw fit to do so. It was a good and wise provision; it was a protection which we needed in our fundamental law. They meant to protect the people against the tyranny of large moneyed monopolies; and they did well. That Constitution stands to day. It stood in full force and power on the 17th of April, 1860. It was necessary, because a franchise given by the Legislature; the law-making power—is in the nature of a contract; it had been so decided by the Court in the case of the Dartmouth College—that a franchise—a gift to the founder of that college—is in the nature of a contract, and could not be taken away by the Legislature. The Constitution of the United States provides that no State shall pass any law impairing the obligation of contracts; therefore if a contract exists, any law of the State, an act of the Legislature impairing it would be void, as contravening the provisions of the Constitution of the United States. A grant is a contract; a franchise, a gift, a right conferred by the Legislature is a contract, and since the case of the Dartmouth College this principle has never been doubted. No legislative power can take it away. The Constitution of 1846 provided that hereafter when the Legislature grants franchises, the Legislature shall have the power of taking them away; and those who take any of these grants, shall take them subject to the right of the Legislature, to take them away. If I sell you a horse to-day, with the right to take it back to-morrow, I can do so, because it is a part of the bargain; but if it is not a part of the bargain, I could not do so. That is the case exactly. Keep it steadily before you, that under our State Constitution, no grant could be made to any corporation, or joint stock company, or company having the rights, franchises, &c., of a joint stock company which the Legislature could not take away; so that all grants to corporations, companies, and associations were taken, subject to the right of a future Legislature to take them away. If you form a corporation, or procure a charter from the Legislature, any future Legislature can take it away again; because before

you got it there was a provision in the Constitution that they might take it away, and you take it subject to that provision—it is a part of the bargain by which you acquire it. Now, these men did not mean to make two bites of a cherry. From the time I have referred to, when this magnificent mine of wealth appeared before the eyes of the politicians of that day—from that time, to the time they attained it, whatever of ingenuity, whatever of skill, could be brought to bear upon the subject, has been brought to bear; and by almost a flight of genius these acts of 1860 were so framed as to evade this glorious constitutional provision! *Evade it!* Wickedly evade it! Evade it in fraud of the rights of the people; for it subjected the people to a cruel monopoly of moneyed, huge, unwieldy, soulless corporations, which were afterward formed and took assignments of the grantees in question. These acts create no corporations, nothing of the kind; they give to A, B, C, D, E, F, G, H, and their assigns forever the rights and franchises conferred. You see it is a grant with no power to take it away under the provisions of the Constitution, conferring the right to lay down and run these various roads all over the city; everywhere a road can by any possibility be necessary or profitable. They give it to these grantees and their assigns forever! The plan was most cunningly devised. The more I consider these laws, the more I appreciate the astonishing intellect of that man to whom I have so often referred for I am told that it was his device that thus laid the constitution powerless at the foot of the Lobby. Thus he counseled with himself and his confederates—"We will have the franchises granted to A, B, C, D, E, F, and their assigns—to persons who shall hold them for us and transfer them at our bidding; then we will form corporations under the general act of 1850, and take assignments from these persons to our corporations, and there we are forever secure from the people, whether their majesty speak through Legislatures or constitutional Conventions, we are safe." "We will do that; and then we will form corporations without personal responsibility or liability; lay down tracks and run these roads or not, as we see fit, we have it all in our own hands forever." "Our franchises are purchased from individuals, and no Legislature, no law, no Court, no constitutional Convention, nothing under the broad light of heaven can ever take away from us this right! We have got it to-day; we have got it forever and forever!" That is the fearful truth! There is but one event that can take it away, and that is that awful event—*Revolution!* That is the only thing that can ever take away these rights. Gentlemen, it was competent, it was usual to provide in acts of the character of these, "These acts may be repealed by any subsequent Legislature," and then it would be in the power of the Legislature to take away these grants, because it was a part of the bargain that gave them that they might be so taken away. Yet only one of these acts had that clause in it. The Legislature had their attention called to the subject you see; because they provide in only one of the bills that the grants may be repealed or modified, but the others never—*never!* Under that one, in which there is this right to take back, they have got organized with a President and Secretary and opened their stock-book, and it forms what is called the Belt road. It runs along the North and East Rivers, across near the Central Park, and belts the lower part of the city completely. This franchise is of very great value, it runs along by these docks (pointing to the map) in the lower part of the city where an immense business is done; so if you have goods there upon these docks they can be run right out on to the track and then they are ready for transportation to any part of the city. That is one of the most valuable interests probably in the world. The corporation when they

come together fixed the stock value of the franchise at one million and a quarter of dollars. They were very cunning to value it at this comparatively trifling sum, if they had put it ten million dollars which is its probable value, they would have alarmed the people. But we will take their estimate of it—a million and a quarter!! True, this grant has a repealing clause in it; but the others have none. The Seventh-avenue grant is scarcely less valuable, and that is true of some of the other grants; and this immense amount of property was nominally given to various persons named in these bills respectively by the Legislative acts of which we complain, and which we say were *corrupt*. That act is corrupt, which ought not to have been passed by reason of having been voted for from motives other than the public good. If when you are about to elect a man from your District to represent you at Albany, he says, "I want you to elect me to the Legislature, for, although the property of the State belongs to all the citizens alike, yet I want to take a million dollars worth of the property of the State and give it to A B, C D, and E F," you would reply, "O no, you must not do that; you must not take away our property and give it to individuals; that is not right. You must legislate for the good of all—for the good of the whole State. You must not select a single individual interest, and promote that at the expense of all the rest; that is corrupt." You heard the oath administered to the Grand Jury—"you do solemnly swear you will present no person from envy, hatred or malice; you will withhold no presentment through fear, favor, affection, reward, or hope of reward." If they violate that oath, they should be indicted, and your District Attorney would charge them in the indictment with having acted corruptly. We say a usurious contract is a corrupt contract—that the parties corruptly agreed to take more than seven cents for the use of a dollar for a year. A usurious agreement is by law a corrupt agreement. The statute of 1853 provides that a party may be indicted for being influenced to give his vote by any external consideration of good or advantage—an indictment for a violation of that act must charge him with having committed a corrupt act. Now we charge these acts with being corrupt! We say that these persons voted to take away from the State a franchise, or rather give away from the State a right, which was of great value, to individuals, selected individuals; and the very act itself on its face was corrupt. If your servant, when his friends come around him, gives away your property, a hoe to-day, and a wheelbarrow to-morrow, and a shovel the next day, you don't think there is much difference between his case and that of the man who takes your property without giving it away to his friends; you don't think there is much difference; there is none in law and none in morals. But to the acts: "An act to authorize the construction of a railroad on southwest, and certain other streets in the City of New-York."

Mr. FOSTER—There is no such bill mentioned in the answer.

Mr. WILLIAMS—Is your position this, that you will not allow me to prove corruption on Mr. Littlejohn by showing it through this act? If this is your position tell the Jury so.

Mr. FOSTER—I am not here to be catchbised; I propose to talk to the Court.

Mr. WILLIAMS—[proceeded to read from the acts; reading the names of the grantees, characterising them as for the most part, unheard of and unknown individuals holding by appointment—holding for their masters]. Gentlemen, these acts took that form, and they came forward to be passed in that form—giving franchises to men—Why given to these men? Why not give to Mr. Weed, Mr. Law, and Mr. Sweeney and their associates, the real owners of them? They did not choose to let their names appear. Millions given away here, to men you never heard of—you may poll this Court-room and you cannot find a single man

who ever heard of half of them; you cannot find ten men who know one of them. In some countries it is common to pension a veteran patriot who has done great service to the nation. It is so in England. I look with admiration on the English Constitution in that respect. The great Duke was pensioned. I remember sitting in the House of Commons when the vote was passed giving a pension to the Speaker who had filled the chair of the House of Commons for 18 years, without having received a shilling for his services. It is common and I conceive proper, for Legislative bodies to reward the services of great men who have served their country; men who have exposed their lives upon the field of battle.

"Patriots have toiled, and in their country's cause
Bled nobly; and their deeds, as they deserve,
Receive proud recompense. We give in charge
Their names to the sweet lyre. The historic muse,
Proud of her treasure, marches down to latest time;
An sculpture, in her turn, gives bond in stone
And ever-during brass, to guard them
And immortalize her trust."

But who ever heard of these men who have millions given them? Your money and mine! The State of Maryland, a few years ago, contemplated the necessity of running railroads through the City of Baltimore, and what did they do? They gave the franchise to certain individuals, pledging them to proceed at once upon the work or lose the franchise; they fixed the fare at five cents, provided that one cent on each passenger should be paid into the City Treasury to make a park; and that one cent to-day has built a park superior to the New-York Central Park, which has cost nearly \$7,000,000! That is history. Seven million dollars it has cost to-day, and it is but begun, Baltimore, I am told, has a park superior to this, out of the one cent of the five cent fare on just such railroads as these. Take away my property and yours! I tell you, they take away the property of every man in the State of New-York. These men, then, have got these franchises. I will give you the form in which they dispose of their stock. It will be a printed paper like this: "For and in consideration of the sum of \$10, to me in hand paid, the receipt whereof is hereby confessed and acknowledged, I—whoever it may be—hereby sell, assign, transfer, and set over to such a corporation—naming it—all my right, title, and interest in and to the franchise conveyed to me in chapter 111 of act so and so; to have and hold unto the said corporation forever." That is the way they have disposed of their franchises, or at least a part of them. We shall take the trouble to prove only one of these as a sample. Now, these men named, as I have told you, represent respectively one of the three interests. The division of those respective interests was carefully agreed upon and fixed before the passage of the acts. Some of these men have not been true to their masters; although, gentlemen, in the corrupt machine politics of the day, the great virtue of a man is to be false to every human being but one—a man like the man who "hasn't anything and wants something;" the man who brought the pipe-layers from Philadelphia in company with the man in a snuff-colored coat and a white hat—you remember all about him. The great virtue to be true to one and false to all else is rare, but such men can be found, and they are the most valuable men in the world. Rochefoucault sought such men and would have no other about him, and the Rochefoucault of this country has adopted the same maxim. It is said that a majority of one of these franchises have already been sold out for \$50,000—the road most needed by the people of that city—to a party whose pecuniary interest absolutely forbids him to build or run the road. I do not assert this as a fact—though it is highly probable—so probable that if it be not already done I feel sure it will soon be done. In this event of course the minority grantees will stand a pretty good chance to lose all benefit from their franchise; at all events it is understood there never will

be a track laid down over that avenue. You will remember the Governor in his veto-message suggested the very thing to Mr. Littlejohn and his associates before he came down from the speaker's chair to advocate the passage of these bills over the Governor's veto. You recollect that he said that these grantees were not a corporation, and therefore not within the provision of the Constitution, and therefore the grant was in perpetuity. The message which the learned counsel attacked with such severity! He suggested to Mr. Littlejohn that there is no obligation imposed on these grantees to make or build these roads by the bill in question. He says these roads are needed very much; but by making the bill a law, if the grantees or their assigns have such interest in another road as to make it for their best interest not to build this road, or either road, they never will build it, it is easy to suppose those who own the Eighth and Sixth avenue Railroads have such an interest in them that they find it for their interest to prevent the building of the Seventh avenue Road; they never will build it; they never will permit it to be built. That is clear. Are you going to compel them to build it? You cannot. The Governor tells you there is no provision to compel them to do it. They may hold these franchises forever and never build those roads. And you may go to New-York in 1870—when your children are doing business there in 1890 you and they will go up in cars with 70, hanging on inside and out at the hazard of life and limb, because somebody under this act owns the franchise on the Seventh Avenue, and there are no cars there. It will be so in 1890; it will be so in 1900, and so on until—what? Call a convention for a new Constitution? That will not remedy it. "No State shall pass any law impairing the obligation of contracts" says the Constitution of the United States. Gentlemen, a revolution that sweeps away all things and opens wide the grave of empire, between you and your children to-day and the privilege of going up the Seventh Avenue in a car, 10, 20 or 50 years hence! The thought is overwhelming, but it is true. What disposition has been made of this franchise one cannot hear; but it is true that not a blow has been struck directly or indirectly by any of these grantees or their assigns to build a road on any one of these avenues, though they might build a road in three weeks' time for about \$10,000 a mile. They have not done it. Are they going to do it? Ask those deep in the secrets—perhaps they will tell you. Are you going to build these roads? We demand of them, Are you trading and speculating on these franchises in Wall street? Or are you selling these rights, these franchises, or realizing on them, just as you gamble with stocks in the stock market? They have not done anything yet, and they can never be forced to do anything, unless you upset the Government by a revolution. The law cannot do it. The Legislature cannot do it. A Constitutional Convention cannot do it. There is no power to do it. *Revolution!* Revolution alone stands between you and me and the execution of these franchises so much needed, so much called for by the people, as you are told by the Governor in his annual message of 1860. These gentlemen, who are the grantees of these rights, I understand, make handsomely out of them by selling them. I understand that \$5,000 is deemed to be a fair price in the market. Precisely how it is divided, or how it is mixed up, I confess I cannot undertake to state. Nobody can who is willing to do it. I notice the name of Wm. A. Hall in one of these acts. I do know what became of his franchise. Wm. A. Hall is one of nature's noblemen; he didn't know that his name was in this bill till after it was passed. After the adjournment of the Legislature the father of the lobby came to him and said: "You see your name is in this bill; we want a little money." "Money! What for?" said Mr. Hall. "Oh," said he; "you know these things cost; these

things cost—it is very valuable, Mr. Hall." Well, Mr. Hall declined to pay any money. The veteran then applied to Mr. Hall to sell out his rights under the act—offered him \$3,000. Mr. Hall declined. Mr. Hall then began to consider what he should do with this unexpected acquisition. There is, gentlemen, in the City of New-York a society for the reformation, protection, and, in some degree, support of those persons of the other sex who have been abandoned to vice and crime. At the head of that institution, is the daughter of that veteran reformer, now no more, who exhibited in our time the valor and the piety of ancient heroes, Isaac T. Hopper. It is refreshing to speak of personal virtues and touch on lofty themes, in the connection in which I am now speaking, for I have been leading you through a labyrinth "of darkness," as darkness itself, where the very light is darkness. When we contemplate one bright spot, it is a repose to the heart—it softens and subdues us. Well, gentlemen, Mr. Hall thought he would do what good he could with this waif of sin thus bestowed upon him. What he had received by the craft of abandoned men he hastened to bestow for the benefit of abandoned women. He assigns all his interest to this institution, and from this franchise, God grant that many a poor child of sin and sorrow may find that repose, at the close of a life of want and shame, which may lead to brighter hopes, than any of these wicked men who bestowed on him that franchise, can ever hope to find. That is what became of one of these franchises—it will go for the benefit of these poor sufferers, those who are sinned against as well as sinning; and if any effort of mine can ever assist to wrest it from the hands of those who are now cheapening it in the market, and augment it to its full value for them, it shall be most freely bestowed. Now, gentlemen, there must have been some motive for taking this property and giving it to these individuals. What do you suppose was the motive of Mr. Littlejohn in doing it? On the 3d of April, I think, these bills passed the House of Assembly and the Senate, and were sent to the Governor for his sanction. On the 16th he returned them, with his veto message, which was read to you last night, in which he sets forth their enormities in language of the sternest rebuke, using the word "flagrant," which is almost the only adjective used to enhance the word *wicked*; "*flagrant wickedness*" is probably the most intense expression in our language. "These *flagrant acts*," he says, and he repeats the word. He says "this franchise is in perpetuity." This message is read in Mr. Littlejohn's hearing; and after the reading, he leaves this lofty station where he sits, as I have said, like the lady in the masque, "lofty, spotless, and serene;" he comes down to the floor of the House, and mingles in debate, advocating the measures, and by virtue of the peculiar hold he has on that body of men through whatever appliances it may have been brought into exercise, he carries the measure over the veto of the Governor. In England, and I refer to English legislation as a model always, so far as the purity of legislation is concerned; in England the veto power has been used but three times in more than two centuries. It exists there as it does here. In this Government Presidents have lived through their four years' office without vetoing a single measure, and down to a late period vetoes were uncommon. I challenge the historian to show a single veto of a measure of any character which was not put upon political grounds. But is there any politics here? Nearly half the corporators are Democrats, and the rest Republicans. It was voted for alike by both parties, as you were shown last night. No politics here. In Gen. Jackson's time the attempt was made to pass a bill over his veto, because, they said, "Gen. Jackson represents one class of political opinions, we represent another class of political opinions, we labor

that our party and political principles may prevail, the bill in question represents a great political principle." Why did the member from Oswego take the pains to come down out of his chair and advocate the passage of measures that were mainly financial—questions of franchises worth money? Was any political principle involved? Any State or party politics at stake? Yes, we are told there was. Mr. Littlejohn, in his speech, in which he vindicated himself from the imputations of various newspapers—*The Post, The Times, Herald, Tribune*, &c.—tells you that there was. He says he was "opposed to selling franchises." Why? "because," he says, "if you sell the franchises, those who build the roads will have to raise on the fare; and I go in for the laboring classes." For the "toiling poor" is his well sounding phrase. "They who live and work in New-York ought to go the whole length of that city for five cents, and if we sell the franchises, they will raise the fare." Why, Mr. Littlejohn, your bill provides that it shall not be above five cents. You know—it is history—that these railroad corporations are the most lucrative that the world ever saw. It is history. You go in for the "toiling poor"? Why didn't you just take hold and cut that fare down to three cents? Nay, why did you oppose that measure when it was pressed by others. There were men in New-York who offered to come forward and pledge themselves—give security to build the roads and run them in the best manner, for three cents a passenger. This was well known. It was stated in the House over and over again, in the hearing of Mr. Littlejohn, and published in the New-York papers again and again. The gentlemen who came forward and offered half a million for one road in 1859, were still ready, cash in hand. In 1860, over two millions could have been obtained. The wealthiest men in the city offered this, money down, for these franchises, with pledges of every kind that could have secured the community against abuse. Why didn't you go in for that? If not that, then *something* of this kind? You might have done it. Don't skulk from the issue by debating with the Governor, whether the grants are in perpetuity. Answer this if you can. We shall hear what his counsel will say to it! Well, gentlemen, if you can find any motive for Mr. Littlejohn's conduct on that occasion that can help his case you will find it. Let the counsel on the other side find it if they can. But he did give one more reason for it. The Governor in his veto message after speaking of rendering these valuable franchises a source of income to the city. He says:

"Again, the bills to which I am constrained to interpose my objections are grants of power in perpetuity. Ordinary prudence would suggest that this should be avoided. Powers that are useful to day, under the changing circumstances of communities, and of municipal operations, may a few years hence become objectionable. Hence it is that the exclusive benefits of patents are limited; the existence of corporations circumscribed within certain periods; ferry franchises defined and restricted. The whole genius of our Government requires that privileges granted, especially those of pecuniary value, or affecting the public convenience, shall, after a certain time, cease, and the power of revision and amendment be exercised in accordance with the requirements of public interest.

"But the privileges conferred in these acts, authorizing in some cases the entire engrossment of streets, are without limitation; and if, at any future time, the use of these public avenues should be demanded for other purposes, there is no determinate period to which the inhabitants or corporate authorities could look for a cessation of the privileges now granted. Nor is there any power reserved on the part of the Legislature to alter, modify, or repeal these grants, however flagrant shall be the abuses which may grow up under them.

"Nor is there any provision in these bills prescribing a time within which the proposed railroads shall be constructed.

"Secure in the privileges conferred, the parties in interest may delay action to such time as their own convenience shall be best subserved. In the mean time, the immunities granted may be the subject of constant barter and sale, without the slightest accruing advantage to the public."

"But the Governor was mistaken," says Mr. Littlejohn; "he had not looked far enough into the Consti-

tution. I, a poor legislator and a very humble man, have looked farther into it." The Constitution is written on two or three pages of paper, every public man knows it by heart. You know it as you know your catechism. "But the Governor had not looked into the Constitution." Mr. Littlejohn had looked further, and he says they are not in perpetuity, because article 8, section 3, provides that joint-stock corporations and associations shall be included in the word corporation. Why, gentlemen, the word company or association is not named in these bills! There is no decent pretense for saying that these acts create joint-stock companies or associations within the constitutional provision. No more pretense than that there would be for saying that a pecuniary note, reading "for value received, I promise to pay John Doe and Richard Roe five hundred dollars" creates a corporation or joint-stock company. They are no more within the constitutional provision than they are within the ten commandments. I don't give Mr. Speaker Littlejohn much credit for that subterfuge, it only adds stupidity to profligacy. Why, *did* he think so? Then I will tell you what I think a good legislator, what I think an honest man, would have done in those circumstances. He would say, "Why, Gov. Morgan says these are grants in perpetuity; I guess Gov. Morgan knows of article 8th, and section 2d; and the law which governs joint stock companies. I am not a lawyer; but the Governor, he has by his side the law officer of the State—the Attorney-General. The Governor has not said this in a public document which is to live forever, without looking into it. I think I had better look into it. I will take the advice of counsel learned in the law." Don't you think an honest man's mind would have run in that groove of thought? Don't you think he would have taken that view of it? There is not a lawyer in the State of New-York, who has any character to lose, but would have laughed at the question—not one! But this is Mr. Littlejohn's apology for this; nay, his "defense" uttered nearly six months after the passage of the bill. He had six months to get his answer or apology ready. But he did not apologise; he said in substance: "I voted right, the bill was right and ought to have been passed." He justified himself for doing what he did. Six months after; with all the flood of light which had been thrown upon it, that is the best subterfuge he can devise. Then he came forward—true to his company of forty—and *vindicates* the measure, and says it was right. That was the unkindest cut of all. If he had said at this time, "I repent; I did not understand this; I was mistaken; this has given franchises of inestimable value to those grantees. They are selling out, and getting \$5,000, \$10,000 and \$15,000 a share. I think I did a little wrong." It would have softened the case somewhat, and it would have tended to show that he was more dupe than profligate. Didn't he know at the time he voted for these measures that there were men in New-York ready to give enormous sums for what he was bestowing for nothing? Mr. Conkling, who sits over yonder will tell you that he raised his voice in the hearing of Littlejohn; and that he protested against this profligate legislation; he came forward and said: here are millions ready to be given by the most substantial men in New-York ready to bind themselves to aid "the toiling poor," for whom Mr. Littlejohn has such sympathy. The feeling among our best citizens went so far that a Judge of the Court of Appeals came down from his high seat, and drew a bill which was presented in the House and presented in the Senate; it was commented upon and urged in debate and through the press, as the bill under which these railroad grants ought to be made. It provided that these franchises, under certain circumstances, should go to those who would come forward and give the largest sums and the best assurances of speedy and beneficial use to the public and which should most inure to the benefit of the city

and the State. It was admirably drawn and it met the public approval. It would have left in your pockets and mine, in common with the people of the city and the State, the benefits of these millions—and would have given us the needed railroads into the bargain. Why didn't Mr. Littlejohn vote for that? and if there was any provision he didn't like, why not amend it? He was powerful and could do it, and make it right, if in any respect he thought it wrong. It gave the State and the people the benefit of these franchises. Was it theirs of right? or had the lobby earned them, simply by having spent the whole Winter in Albany? There are Mr. Littlejohn's brother and his brother-in-law, both at Albany. They are there in the House, inside the railing, sitting with the members, and talking with the members, and sometimes they whisper together, and then very quietly go out together. How came he within the circle there, Frederick S. Littlejohn? He came with a pass from the Speaker. And there is Dr. Thompson of Quarantine memory, how came he to be there? Look into his hands and you will see a pass from the Speaker.

Mr. FOSTER—I ask the counsel by what authority he says that Frederick S. Littlejohn and Dr. Thompson had authority to come on the floor by a pass from the Speaker?

Mr. WILLIAMS—We will prove it, Sir.

Mr. FOSTER—Very well, go on then.

Mr. WILLIAMS—The counsel is nervous on the subject of Frederick S. Littlejohn! He knew he ought not to have been there. He was a wolf among the sheep. Counsel repel the imputation that he got there by the aid of Speaker Littlejohn. You know that no man gets on to the floor of the House among the members without a pass from the Speaker. Lawyers, while attending the Court of Appeals, and citizens whose honest business calls them to Albany, hang around the railing to see what is going on in there; but no Speaker gives a pass to men of that stamp. Frederick S. Littlejohn gets \$30,000 of the stock of one of these roads. Dr. Thompson gets \$40,000. What is it given for? What has Frederick S. Littlejohn done to get \$40,000 in stock, which I say is worth more than par? What has Dr. Richard H. Thompson of Brooklyn—you know him by reputation—what has he done to get \$40,000? I wonder if it will not turn out—I don't know that it will, for we don't select our witnesses; they don't come and tell Horace Greeley what they will testify—but I wonder, if instead of—40,000 and 40,000 makes 80,000—there was not \$120,000 appropriated to the Littlejohn family? I don't know that there was; we are in the enemies' camp so far as getting information is concerned; but I think we shall prove it. We don't think it is a trifling matter for a man to go into the halls of legislation, and sit down with a member and converse about a bill he is about to pass. I don't see why a legislator should be as discreet as a Judge, or as careful not to be influenced by selfish motives, or by others' unworthy motives, as the learned Judge on the Bench. And, gentlemen, there is not one among you, who would not turn pale at seeing that done in the Judiciary, which Mr. Littlejohn certainly did permit to be done every day in a legislative body. If you should see a sight of that kind, gentlemen, you would say, "The legislative body is gone, I know, but I didn't know that the Judiciary was. I thought, I dreamed, I believed that that was pure and upright still." The General Government is menaced by foes from without, but the State has a foe within, more insidious and more dreadful, more desolating, more destructive to the liberties of the people, more subversive of Government. Read the history of falling empires, and learn the dreadful lesson this trial is calculated to teach you.

But, gentlemen, I have detained you long enough on this question; let me pass to another bill, not so dreadful in its ultimate importance, but upon which I think

the proof will be equally strong. I mean the "West Washington Market bill." A word of history here, that you may understand it. The city is bounded on an old map, by certain water bounds and limits. It happened some years ago that some persons desired to obtain the right to run out some piers into the North River, near what is now the West Washington Market, and the privilege was granted to them. They used these piers for some years, when, by some current of the river, accretions began to form, and by and by these places began to get too shallow for large vessels, and finally became almost useless. The city conceived the idea of filling them up and making land out to the end of the piers. Well, the city filled them up and made the land in question, which is worth to-day nearly or quite \$2,000,000. The city filled it up, but knowing that the title was in the State by law, though the State does not always claim land thus created, they did not put up any large buildings upon it; but simply shanties which they rented from time to time, till the city got about \$40,000 a year from the land. The rents of these lands were afterward adjudged to be worth \$108,000 a year, all of which belonged to the State, and should have been paid into the State treasury. This property so wrested from the ocean, belonged to the State by the law of the land. The State then had in that property about \$2,000,000 in value; and you and I had an interest in it as citizens of the State. In 1855 the Harbor Commissioners reported to the Legislature that the land belonged to the State, and that the city was receiving the profits from it. On that commission was ex-Gov. Patterson and John L. Talcott of Buffalo, one of the ablest lawyers of the time. There was no doubt about the title of the State; and the Land Commissioners were called upon to take the land; but for some reason they omitted to do it, until the 24th of April, 1858, when an application was made in writing by James B. Taylor and Owen W. Brennan, to the Board of the Commissioners of the Land Office, which consists of ex-officio members of the Government—the Attorney General, the Speaker of the House, and various others. They said this property belongs to the State, that they desired a lease for a year, and would give you \$5,000 a year quarterly in advance. The same day, hour, and minute perhaps, this body passed a resolution giving a lease to Taylor and Brennan, for one year, at a rent of \$5,000, payable quarterly in advance, and they directed the deputy Secretary of State to execute a lease accordingly. After this, Taylor and Brennan discovered that the city being in possession they might have some difficulty in getting possession. They thought it was well enough to have from the State a covenant of quiet enjoyment and possession of it. So they went to the Deputy Secretary of State, and by some means—rumor tells what—got him to insert in the lease a covenant of quiet enjoyment, such a covenant obtained from this functionary, and, not being given by the Board in the resolution, was utterly void. Still the Board seem to have been very friendly. They pass a resolution continuing the lease as long as the State shall hold the property, or until otherwise disposed of. Soon another, a resolution is adopted conveying to Taylor and Brennan all claim against the city and others for back rents of the premises in question, in consideration that they, by a bond executed by themselves, will indemnify the State against costs. They seem to have a perfect understanding with the Board! By and by they commenced suits against the city—one against the city and all the tenants, 184 in number; but, notwithstanding this bond of indemnity against costs to the State, the Attorney-General always appears with their attorney in these suits. After a while, that Board of Commissioners find that they have done rather a striking thing, for no consideration, but this bond to indemnify the State against liability, which could not at the most have amounted to but a

very trifling sum. Chief Justice Bronson says he has done more work for one dollar than this bond in fact indemnified the State against. The Board had by this resolution (if valid) given away the back rents since 1853, amounting to over a half million dollars for which the city of New-York was inevitably liable; for a bond of indemnity to the State against liabilities which it never could incur, and which never could be enforced against it, for you cannot sue a State. They found they had gone a little too far, so they passed a resolution rescinding the former one and confined the back rents to the period of the date of the lease. But you observe if the first resolution had any validity, the second one was the merest twaddle that ever fell from the lips or pen of a man. "A" bargains with "B," who gives him a consideration for a bond that is satisfactory and afterward "A" backs out of the bargain. An individual cannot do that, and the State cannot do that. If the first resolution was valid it will stand forever and secure. Then, without any consideration at all, somehow or other, Taylor and Brennan got a lease of these premises worth \$108,000 a year, so long as the State should own them for \$5,000 a year, and all the back rents amounting to over half a million of dollars. After this came Mr. Littlejohn into office as Ex-officio member of the Board of Commissioners. Now, gentlemen, observe, up to this time the covenant of quiet enjoyment, contained in the original lease was utterly void. It never had any sanction whatever by the Board. It was put in the lease by Mr. Morton! "What private grief he had, I know not; he is wise and honorable; perhaps he will, with reason, answer you." Up to this time Taylor and Brennan had no covenant for quiet enjoyment or possession of the land. Up to this time the State had not agreed to join to fight his battles through, if indeed there was any battle to fight. Mr. Littlejohn goes into office, and among his earliest acts at the proper time he rises in the Board of Commissioners and proposes a resolution, renewing the lease for the term of a year, making it end in 1860 sometime, upon "the same terms, conditions, and covenants contained in the former lease." That resolution passed, and under that they executed the first lease that was valid, by which they compelled the State to fight through the battles of Taylor and Brennan, and effectually gave them for \$5,000 what was really worth \$108,000. That second lease, which was given under Mr. Littlejohn's resolution, and bears date the 3d of May, 1859, conveyed the title which the act in question compelled the Controller to purchase Taylor and Brennan. Taylor and Brennan are now in a pretty good fix. They have got a title to all the back rents—some kind of a title at any rate. They have got the sanction of the Board for a lease, with covenants of quiet enjoyment of the premises. They have remarkably good luck in getting through these suits. Let us follow them through it. Mr. Littlejohn's resolution, under which they got their title, was passed on the 3d of May, 1859. On the 14th of May, Taylor and Brennan commenced suits. On the 24th of May they recovered a judgment by default against the city, for the possession of this land in question, and for \$69,108 45. That judgment was entered on motion of John H. Platt, Attorney for Taylor and Brennan, and Lynan Tremain, Attorney-General of the State of New-York. October 6th, a second judgment by default was entered against the city of New-York for \$49,629 80 on motion of Mr. Platt, Attorney for Taylor and Brennan, and Mr. Tremain, Attorney-Gen. A third judgment was entered December, 1859, on the report of three referees, for \$51,196 89; it was entered on a report bearing date December 10, on motion of Platt alone. The next judgment, which was the judgment for back rents, beginning back from the time the city first began to occupy the premises, up to the commencement of the suit, was entered December 15,

1859, on report of referees, on motion of Platt, for \$483,194 14—these four judgments making an aggregate of \$653,129 28. You see at a glance how that judgment was obtained. If you occupy my premises, and you let them to the gentleman next to you, and he pays you the rent, I can sue you and recover all the money he has paid you, as money had and received for my benefit. All the rent which the City of New-York had already got, for the use of the premises, or what it was reasonably worth, the city was liable to Taylor & Brennan, for under that resolution. These referees reported, upon their oath, that these premises were worth \$108,000 a year; and they gave judgment at that rate. Well, gentlemen, here we are; here are judgments against the City of New-York amounting to over \$653,000, in favor of Taylor & Brennan, on the docket. There they stand and Taylor & Brennan have a lease still unexpired. There we are in the Autumn of 1859 and at the commencement of the session of 1860. There we are when Mr. Littlejohn is made Speaker; with absolute power to appoint the Committees just as he pleases. I don't know but that statement needs some qualification; that Lobby is a powerful body of men. Its head is sometimes called "*The Dictator*." But there we are; this property owned by the State, worth \$2,000,000, and Taylor & Brennan have judgments under their leases for \$659,000 and upward. We go into the Legislature under this state of things. What do you suppose now takes place? I want you to recollect this conduct of Mr. Littlejohn, which I am about to detail to you, with legislative purity, with legislative decency, if you have the means—if you know how. Here is an act which is entitled, if the Court please, entitled "An act to authorize the sale of certain lands belonging to the State, and to empower the Corporation of the City of New-York to purchase the same," passed April 17, 1860, notwithstanding the objections of the Governor. [The counsel read from the West Washington Market bill, referring particularly to the seventh section.] That bill is what the learned gentleman last night called the "West Washington Market bill." That bill first passed on the 3d of April, 1860. Taylor & Brennan were there with their whole following, where they had been during the entire Winter laboring for the passage of this bill, and incidentally no doubt for the other bills—the railroad acts; the proposal probably was with the master of the Lobby and Mr. Littlejohn, "Don't you oppose my bill for paying my judgments, and I won't oppose your bill for getting the railroad franchises." At all events, such a proposition was practically acceded to. And so they went on; they were lovely and pleasant in their lives, and in their death perhaps they will not be divided. They went into the Legislature hand in hand, they succeeded on the same day, their bills stood side by side in the public archives and the public prints, fortune favored them alike, alike triumphant over the Governor's veto, alike aided through by Mr. Littlejohn, with the aid of all the Lobby machinery and Lobby appliances; alike in both cases he left the Speaker's chair to advocate their passage over the Governor's veto, in both instances attacking the Governor, alike voting for both on the same day. Now, what excuse Mr. Littlejohn may have for this conduct I shall not attempt to conjecture; I leave that to him and his able though sensitive and troubled counsel; it is their duty to explain, palliate, justify, if they can. I will tell you one or two difficulties in the way of getting through with any rational justification of that bill. These judgments against the city were obtained through fraud so gross that they were set aside by a most indignant order of the Supreme Court of the State of New-York—as obtained by fraud and nothing else but fraud. They were got by default; the city did not defend for some reason or other; they charged it upon the Corporation Counsel. They charged he was in the interest of Taylor & Brennan. If affidavits are true which we have here, they either prove it or

that he was crippled in his defense by the Commissioners of the Land-Office. On the 3d of April these bills came up before the House for passage. Mr. Conkling and other good and true members of the Legislature had presented protests and memorials—but how vain! Why talk to men who had all things, to use their own phrase, “fixed,” “fixed?” They were told that the judgments were collusive and corrupt, and ought not to be passed—that proceedings were pending to set them aside. “Mr. Noyes says there is a perfect defense against the actions. The Corporation Counsel, Judge Bronson, says there is a perfect defense.” You know Judge Bronson, who presided over the Supreme Court for so many years. “Mr. McKeon says they are corrupt, and cannot be sustained.” Mr. Conkling quotes all these high authorities. What did Mr. Littlejohn do? He came down from that place, where you remember you saw him sitting so lofty, and so serene, and seemingly so spotless—he came down and took the floor of the House, and there stated in the hearing of the country that these judgments were good and valid judgments; that the Controller of the City of New-York favored the payment of them; that Judge Bronson said they were valid judgments, and ought to be paid. “I know about this matter,” was his exclamation. “I knew about this matter,” were the words he used. They were asked by Mr. Conkling, “Why not leave it in the discretion, and not make it the duty, of the Controller to pay these judgments?” A motion so to modify the bill was voted down, and the imperious direction retained. Such legislation cannot be found on another statute book, either in England or America. It was stated by counsel, Mr. Evarts, “that the Controller, under that act, could have been compelled by mandamus to pay these judgments;” and he would have been compelled to pay them, but that the judgments were fraudulent, and soon set aside and vacated by the Court for fraud. No compromise was offered or made until they were set aside. But after they were set aside, Taylor & Brennan, knowing the matter would not bear the test of judicial investigation, came in and had a compromise. Mr. Littlejohn was told all this was, and would be, yet he came down, and by means of statements which had no foundation in fact, these bills were passed. The next day a letter was written by Judge Bronson to the Governor, in which Judge Bronson expressed the opinion that “they were fraudulent, void and ought not to be paid.” He referred to the statement of the Speaker and branded it as it deserved, and he denies that he ever said that the judgments were valid or ought to be paid. He denied that in an affidavit, a copy of which I have here; Controller Haws denied that he ever said he was in favor of paying them, or that he ever said that they ought to be paid, but pertinaciously insisted that they were absolutely void for fraud. When this bill came before the Governor for his signature, he declined to sign it. He returned it with this extraordinary message which you have heard read. In that message he extracted the passage from Judge Bronson’s letter to which I have referred. He stood up firmly against this tide of lobby corruption. He stood firmly supported by one man—leaning upon one man, relying upon that support for he felt that it was honest, faithful, earnest. He knew the man. He sits over there. [Pointing to Mr. Greeley.] [The counsel read the Governor’s message from *Senate Journal*, page 866.] Now, gentlemen, on the 17th of April, the bill, as I have said, was returned with this message; this message with the extract from Judge Bronson’s letter was read in the presence and hearing of Mr. Littlejohn; and after it was read, Mr. Littlejohn left the Speaker’s chair and came down again in the arena and advocated the passage of the bill. Now, if he carried the bill on the 3d of April by stating that the judgments were valid and ought to be paid, and based his authority on this subject on the pretended statements of Greene C. Bronson

and Mr. Haws, if he then believed those statements, he certainly was disabused of that belief by the Governor’s message, where the Governor quotes from Judge Bronson the language which has been read to you. Gentlemen, I don’t know what were Mr. Littlejohn’s motives in making the statement he did make when the bill first passed; whether he will claim he believed the judgments were good and valid because he relied on the judgments and opinions of Haws and Bronson. If he does, a wonderful change has come over the spirit of his dream before the 17th, when his mind is disabused on that subject; when the Governor argues and expostulates, still he comes down and advocates the passage of the bill, and carries it over the Governor’s veto, and makes it the law of the land. There would be some relief to this matter if you could think that Mr. Littlejohn was entirely ignorant of all that had transpired in the office of the Land Commissioners during that current year; but the difficulty is, Mr. Littlejohn was a member of that Commission, and it was his own resolution that gave Taylor and Brennan these rights, if they had any real rights. He was then sustaining himself as a member of the Board of Land Commissioners, or at all events he was carrying out the same plan or purpose, which seemed to have been conceived and acted upon while sitting in that Board. I don’t know what will be the explanation of all this. I know it will not be that Mr. Littlejohn was ignorant. He has been several times Speaker of the House of Assembly, and I don’t believe it is going to be claimed by counsel that he acted ignorantly, stupidly—that he was deceived or duped. If he has any excuse for his conduct, any apology for it, it seems to me it all points one way. His philosophy must have been, “If the servant is worthy of the hire, then the hire is worthy of the servant.” After the bill was passed Mr. Haws hesitated to settle, he waited to take the advice of counsel; and finally got a hearing before Judge Ingraham and the Judge set aside all these judgments, and directed that Taylor and Brennan should pay back \$30,000, which they had received from the Receiver as rent of these premises. They had over \$60,000 from the rents of this property at the time the judgments were all set aside. When this was done, Taylor and Brennan offered a compromise. Judge Bronson hesitated for a long time and was very slow to come into the arrangement. But Taylor and Brennan were ingenious, Mr. Mattison of Utica was in New-York for weeks; they retained Judge Beardsley, who had been the partner of Judge Bronson, and finally succeeded in bringing about a settlement, by which the city was to pay to the State \$300,000 for the title to the land; and pay to Taylor & Brennan \$300,000 for the judgment, and allow them to retain the \$60,000 they had in their hands, thus giving Taylor & Brennan \$360,000, and the State \$300,000. The bargain was well enough for the city because the city got land worth \$2,000,000, but the State has lost—lost what it was entitled to all the back rents, amounting to \$650,000 and upwards, and the whole of the property, and it has got \$300,000 which the counsel last night boasted had been got through the efforts of Mr. Littlejohn. If this is the kind of bargain Mr. Littlejohn generally makes for the State, one would suppose he hardly would be successful, even in the business of a common carrier. He trades better for himself than he does for the State, or he will soon be bankrupt irretrievably. As I have said, these judgments were set aside and that settlement was made, and the city has got the title to the property, and the State has lost it; and the State has got \$300,000 for what was worth, including the back rents, over \$2,500,000. If there is any excuse for this, let them have the benefit of it. It is reported that a great deal of money was used about that Legislature: it has come out lately in testimony before the Albany Grand Jury that a great deal was expended—I have heard it said

more than a million dollars were spent in and about that Legislature. I don't know how this may be; but some very bold things were done. I don't know whether the Speaker participated in anything; but things were done around him so closely that it seems very strange if he did not know anything about them. Take a scene of this kind and I don't see how Mr. Littlejohn can be free from some knowledge of it. A member is sitting in his seat. He has a little local bill which he wants passed; one of the Clerks goes over to him and says, "Have you any interest in that bill?" (naming it). "Yes." "Do you want to get it passed?" "Yes." "How much interest have you in it?" "I don't know." "Well, you better find out, pretty d—n quick." "Why, what do you mean by that?" This leads on to a little explanation, till the member says, "How much will it do?" "Well, how much will you give?" "Will \$50 do?" "I don't know but it will." The \$50 is paid over, the Clerk goes back to his desk, and the bill is taken up and passed in a very few minutes! I don't know how that is done, or whether there is any connection with Mr. Littlejohn or not; but if I had a clerk who was sitting before me, I don't believe he could do such things as that without my knowing it. There were a great many honest men who voted for these measures, and Mr. Littlejohn explained in his great defense last Autumn at Oswego, how it came about. He says in his speech, in vindicating himself for voting for the Susquehanna Railroad bill over the Governor's veto (that was a bill, you recollect, that gave to a corporation something like a million of dollars, out and out, to build a railroad)—Mr. Littlejohn, vindicating himself in his speech, says, "the State built the Erie Canal, and the Oswego Canal." So it did, and the State owns them. You build a house, and you own it; but if you build a house for a corporation, the corporation own it, and not you. Is there any connection between the two? But he says "there were twenty or thirty members who would have voted against our measure (some Oswego County measure) if I had not gone in for theirs." That, gentlemen, is what they call at the South *log-rolling*; and that is the way in which a great many men, good, honest men, were unwittingly drawn into voting for corrupt measures. Those men at Albany who have been practicing at that bar—as I will call it—for twenty years, know all about these kind of obligations. One of these good, honest men comes in from the country, and takes his seat. Our lobby man says: "There is a good, honest, old man, we must let him alone." "Oh, no," says another, "there is a way to reach him;" and he goes up to him and says: "What have you got?" "Well, I have got a little local bill here." Well, he gets him to give a pretty good description of it; and when the proper time comes, he goes around to the member and says: "Here is a bill about the City of New-York that I want you to vote for." "Well, I don't know anything about it," says the member. "Well, if you don't vote for it, we will kill your bill, that's all." "Is it all right?" inquires the member. "O, yes, it is all right." "Well, if it is all right, I will vote for it." In this manner good and honest men are got to vote for very corrupt bills. However, it is not to be excused. If you go to one of these men, and say, "Here, that is not proper legislation; if your bill is right, it ought to pass. You are here to act for the State, and not for the individual. You are to act for the public good." You can very easily convince one of these men, and very easily make him say, "Well, they will never catch me so again." But Mr. Littlejohn has stated on a great many occasions, that he did not receive any money for his vote. I presume a great many men could take the stand to say, "I never received money for my vote." Let us suppose a little occurrence: one man approaches a member, and says, "Do you know Mr. So-and-so?" "Yes." "Had

any conversation with him?" "Yes." "Wanted you to vote for his bill?" "Yes." "Did anybody else want you to vote for it?" "Yes." "Who, Mr. So-and-so?" "Mr. So-and-so said there was money for it." "How much?" "\$500." "For each man who voted for it?" "Yes." "Well, I want you to vote for the bill." "I don't take any bribes." "Oh no, of course not. I don't talk about bribes—but there is Jones, he is a good fellow, he won't give you any money, but suppose you come around to my room to-night and take a little brandy and water, and have a little game of whist." Well, by and by evening comes and he goes around to his friend's room and there he finds Jones, a very accomplished player, and they sit down to have a game of whist, and this accomplished player loses \$500; the member puts it in his pocket and goes away, and never gambles again during the whole Winter, but he votes for the bill just as sure as you are born. These fellows who have had 20 years' experience about Albany, don't get mistaken in their men. But some men do not gamble. "No," says one, "I won't play." He talks it over, however—for instance, there is Dr. Thompson over there sitting beside a member for two hours talking with him, perhaps about some railroad, or some corporation, in the City of New-York. Well, he talks it over, and finally one says: "You must vote for this bill, it's all right; the old man has got an interest in this bill, and it must go through; it is on the slate; and if you should be hard up at any time, So-and-so will lend you a little money." A few hours pass, and a little money is lent to that man; and he votes for the bill. This system is carried on to a vast extent. One man went up to Albany in the Winter of 1860, and said, I want to get a very important will case placed first on the calendar; I have got \$60,000 in this case, and I am ready to pay liberally to have this done. The other man says: "Hush, don't talk so loud—come with me and we will go over and see that man." By and by parties are seen, things go along, the bill is passed, and the man goes home, minus how much of the \$60,000? I don't know; but I mean to ask him some time when I meet him in the street. There is one other case in my mind now of the passing of a bill. A good man of New-York wanted a bill passed, and he went up to Albany, and took with him a man not so good as he was, and he went to another man, not so good as he was; and it so happened that the good man came back to New-York with \$3,000 less in his pocket—but his bill was passed. The reporters of THE TRIBUNE could have filled the columns of that paper with matters of this kind. Did not Mr. Greeley believe it? And was he malicious in expressing his belief? Gov. Morgan talks right out. He says: "Eighty members of the Legislature received money for their votes." A reporter comes to Mr. Conkling on the floor of the House, and shows him a list of over seventy men, and he says, "I know every one of these men have taken bribes." Mr. Conkling believed it, and told Mr. Greeley of it, and Mr. Greeley believed it. Were all these things carried on under the eye of that man, and in his almost all-pervading presence, and he not know it? It is perhaps only a misfortune to be poor. We have proof that Mr. Littlejohn failed a few years ago for a large amount of money—I only speak of it as a circumstance to show that he was not rich. I have heard it said: "Elect such a man to office, he is above corruption, he is rich." I don't mean to say that poor men are not just as honest as rich men; as a class I believe they are. But Mr. Littlejohn acknowledged his poverty during this session, and he says emphatically, "My only purpose is to make money." That is what he said, and I don't know whether it is true or not; but if true he was in the way of great temptation. Gentlemen, I could go on and name bill after bill, and circumstance after circumstance, and detain you till the going down of the sun.

"Not go gosses East, with richest hand,
Showered on her kings barbaric pearls and gold."

in such lavish abundance as did that Legislature upon that Lobby. "Pizzaro never held out more dazzling lures to his robber band when he led them forth to the conquest of the Children of the Sun." But I forbear. We shall go into this case for the public good, for the good of just and honest legislation, and the upholding of truth; with no hatred or unkindness toward Mr. Littlejohn, except that we deplore that a man of his talents should have lent himself to such iniquities. We have nothing to say in temper, nothing in anger. We are filled with sorrow, but believe it a duty we owe to the State, to the cause of good government and good morals, as well as to the "toiling poor." And with the blessing of God, we mean to do our duty.

Court took a recess.

AFTERNOON SESSION—WEDNESDAY, Sept. 11.

TESTIMONY OF HON. FREDERICK A. CONKLING,
SWORN FOR DEFENDANT—EXAMINED BY MR. WILLIAMS.

Q. Where do you reside? A. I reside in the City of New-York.

Q. What is your business? A. I am by profession a merchant, and am now a member of the House of Representatives of the United States.

Q. You were a member of the Assembly during the session of 1860? A. Yes, Sir.

Q. When did the session commence? A. I think on the 4th day of January, and terminated on the night of the 17th of April.

Q. Do you know Mr. Littlejohn? A. Yes, Sir; I first knew him as a member of the Legislature in 1854; I was in the Legislature with him that year, and I think then made his acquaintance for the first time.

Q. Were you a member of the Legislature at any time between 1854 and 1860? A. Yes, Sir, in 1859.

Q. During the session of 1859 were any bills brought forward or passed in reference to the New-York city railroads?

Mr. SEDGWICK objected for plaintiff, as we had nothing to do with that year.

Mr. WILLIAMS—We wish to connect Mr. Littlejohn with the enterprise at that early period.

The COURT sustained the objection.

Exception for defendant.

Mr. WILLIAMS—If we cannot prove Mr. Littlejohn's connection with that legislation till the 4th day of January, 1860, I suppose we should not be allowed to prove his complicity with the enterprise at any earlier period, or that he was elected for the very purpose of carrying out that enterprise?

THE COURT—I doubt whether this would be any more admissible.

Mr. SEDGWICK—The electors of his District are not on trial now. That is their business.

Q. Were any bills in reference to the street railroads in the City of New-York introduced during the year 1860?

Mr. SEDGWICK—I object to that; if there were any, there is a competent way of showing it by the record.

Objection overruled.

Exception for plaintiff.

A. Such bills were introduced.

Q. By whom? A. They were several in number; I am unable to say who introduced them; they were reported from the Standing Committee on the Incorporation of Cities and Villages, to the House, for its action.

Q. Who was Chairman of that Committee on Cities and Villages? A. Elias Pond, I think, of Monroe County.

Q. By whom was that Committee appointed?

Mr. SEDGWICK objected, as the matter was not susceptible of proof and entirely immaterial and irrelevant.

Objection overruled. Exception for plaintiff.

A. By the Speaker of the House of Assembly.

Q. Who was the Speaker at that time? A. Mr. Littlejohn.

Q. Were these bills ever considered in Committee of the Whole?

Objected to as immaterial and irrelevant. Objection overruled.

A. My recollection on that point is not very distinct. I could refresh my memory by the Assembly Journal. I know the practice was regarded as being very sharp on that subject, and—

Mr. SEDGWICK—Never mind the practice.

[A copy of the Assembly Journal was handed to the witness.]

WITNESS—[Reading]. I find that the—

Mr. SEDGWICK objected to this reading from the Journal.

WITNESS—The bill never was formally considered in the Committee of the Whole.

Q. Were you in the House when these New-York city railroad bills passed the House for the first time? A. My recollection is that I was.

Q. Do you recollect whether Mr. Littlejohn participated in the debate on these bills at any time, in the House? A. I think he did not.

Q. Were you in the House at the time these bills passed over the Governor's signature? A. I was not.

Q. Were you in the House at the time the West Washington Market Bill first passed the House? A. Yes Sir.

Q. Did Mr. Littlejohn participate in the debate on that measure? A. Yes Sir.

Q. Do you recollect what he said in relation to his knowledge of the matter, or of Mr. Bronson's opinion of the Taylor & Brennan judgments? A. The Speaker of the House stated, in debate, in reply to some remarks I had made in opposition to the bill, that he had information from the public authorities of New-York in reference to that bill, and that he had the authority of the Corporation Counsel and the Controller for saying that the bill was right and proper, and ought to be passed; and as to the judgments, amounting to between \$600,000 and \$700,000, recovered by Taylor & Brennan, he had the authority of the Corporation Counsel for saying that they were good and valid judgments.

Q. Who was the Corporation Counsel at that time? A. Greene C. Bronson.

Q. Who was Mr. Bronson's immediate predecessor in that office? A. I am unable to say whether Robert J. Dillon or—

Q. Was not Mr. Busted? A. Yes, Mr. Busted was.

Q. You said you participated in that debate? A. Yes, Sir; I opposed the bill from the time it was introduced until it was passed.

Q. Did you make any statement in the hearing of Mr. Littlejohn in that debate in reference to these judgments and in reference to that bill.

Mr. SEDGWICK objected to the question. The Court admitted the evidence, and the plaintiff's counsel excepted.

A. I stated repeatedly that the judgments were founded in fraud, and would be set aside upon a proper hearing by the Courts.

Q. Were you in the House when the West Washington Market bill passed over the Governor's veto? A. I don't distinctly recollect. (Witness looked at the Journal of the Assembly.) I find now that I was, and voted to sustain the Governor's veto.

Q. Did Mr. Littlejohn vote on that question? A. The Speaker was present, and voted in the affirmative.

Q. Can you say whether the Speaker came down from the chair, or participated in any way on that vote? A. My recollection is that I reached the House just as the Clerk was beginning to call the roll, and the discussion had taken place before I reached the House.

Q. You don't remember that you participated in the

debate on that occasion? A. No, Sir; I am confident I did not.

Q. Were you in the House at the time the Governor's Veto Message was read? A. My recollection is that the Message had been read before I reached the House on my return from New-York, which I did about 12 o'clock on the 17th of April, 1860.

Q. What was Mr. Littlejohn's influence in the House at the time these bills were passed? and prior to that time in reference to passing bills?

Mr. SEDGWICK objected to the question as mere matter of opinion, and immaterial.

The Court overruled the objection, and the plaintiff's counsel excepted.

A. I considered Mr. Littlejohn the most influential member of that Assembly.

Q. Speak of his ability to pass or reject bills—the bills in question, and other bills?

Mr. SEDGWICK objected on the ground that no man could speak of Mr. Littlejohn's power. We insist that if there is to be any limit to this investigation, it is high time to put down the stake.

Mr. WILLIAMS—We propose to prove, first, that there was corrupt legislation during the session of 1860. We think our charge is, that there was corrupt legislation, and we propose to prove it. We specify certain bills, which we say we will prove were corrupt measures. Our purpose now is to prove that these measures were in point of fact corrupt, and to establish that fact affirmatively. We propose to prove, secondly, that this man, the plaintiff, was a prominent participant in that corrupt legislation.

THE COURT—And your offer does not embrace any offer to prove that the plaintiff was personally corrupt?

Mr. WILLIAMS—We offer and propose to prove that Mr. Littlejohn was cognizant of and knew of the corruption of these measures; and that knowing these facts and having full knowledge of that corruption, he lent his aid and influence to carry them, and by virtue of his exertions, power, industry, and appliances he was successful in carrying them through.

Mr. SEDGWICK—The propositions of the counsel seem to be intended to cover up the point of controversy instead of bringing it out, and to lead to getting in, in a sort of a loose way, evidence about everybody and everything, except the plaintiff in the case, and what he has done, and what has been done to him. Now, if I understand at all what the answer is, they must prove, not that there was unwise legislation, not that there was legislation that had better not have been, but they must prove that there were bills passed there by means of corruption, and that the legislator was bribed or improperly influenced in other ways; and they must point that proof directly to the plaintiff, and show that he advocated, or voted for, or assisted in the passage of bills, induced to it by bribery, or interested personal motives that are equivalent to bribery. Now, if I understand the gentleman opening, they do not propose to prove that Mr. Littlejohn was guilty of this; he avoided this throughout. They don't expect to prove that anybody put money into Mr. Littlejohn's palm, or that he has received anything, or that he has used a cent of money to induce other persons to vote. The only allegation is that, in regard to certain bills, he advocated them and voted for them; that he had a right to do. It does not go one step toward making out this justification; that these measures were unwise in themselves, or that the rights of the State or the City of New-York were prejudiced by the legislation of 1860, unless it goes beyond a mistake in judgment, and beyond an error, or beyond being properly influenced to vote for an unjust or unwise measure. It must have been through corruption and through corrupt motives. They are charged upon the plaintiff in this libel, and unless their proof reaches this point, it goes for nothing, and offers no legal defense. It don't justify the charge made to appeal to the feelings of the Jury,

to prejudice the Jury, or to defend this action on what other men have done. The counsel now does not aver that he will show that this corruption reached Mr. Littlejohn, that he was bribed, or that he made an improper use of his position in the Assembly to bribe, induce, or otherwise improperly influence other members. We will admit that these bills are all corrupt, if you choose. Suppose there was bribery there. Suppose these appliances, on which the gentleman dwelt so long this morning, were used! What of it, if it does not reach Mr. Littlejohn? Nobody else is on trial here. He is the man who is to be affected; and because he has voted, because he has large influence in the Assembly, because he may influence by his eloquence or example to vote for a measure—all that does not affect the point of this controversy a particle. That is a matter between him and his Creator, who has given him these talents and powers, and to Him alone is he answerable for a just use of them. He is answerable here only that he should be free from bribery, though it reach every other man in the Assembly.

Mr. WILLIAMS—I am sure the gentleman misunderstands the defendant's position. In my opening I felt disposed to spare Mr. Littlejohn, as much as possible, and said that it was not our duty to attack his private character in any domestic sense; but the whole drift of the opening was to show that there was but one motive and one fact that could by any possibility explain his conduct; and what that fact was the counsel understands clearly. What motive could there have been for this extraordinary conduct but one? We propose to establish that Mr. Littlejohn was as guilty as any other man. If it took to pass these measures over the Governor's veto two thirds of all the votes, Mr. Littlejohn's vote was a constituent part of this two-thirds, we attach to him as much guilt as to any other man. Nay, he was prominent in that legislation. All those measures were corrupt, and he was prominent in them from motives of which I scarcely feel myself capable of speaking, from the magnitude of their enormity. As to the word bribe, on which the gentleman lays so much stress, no man will swear positively; but we shall press it before the jury to believe that some things very similar to that must have influenced Mr. Littlejohn.

Mr. SEDGWICK—The counsel endeavors to avoid the real question in this case. Does he mean to say that for a member of the Legislature to vote contrary to the veto of the Executive is corrupt? What does he mean by "extraordinary measures that he voted for?" On one or two occasions he had the audacity to speak in favor of a measure he proposed to vote for and nothing more. He talks about members receiving money, and about money being raised in the City of New-York—enormous sums of money for the purpose of carrying certain bills through the Legislature. But does he dare to say that he expects to prove that Mr. Littlejohn received one dollar of that money? Dare he say that in the presence of this Jury, and then come before them and ask them to believe it on such testimony as he knows he has got in this case? and all the evidence that raking the earth, and I had almost said the place below the earth, will bring to prove his case here? Does he dare to say that? And yet he insinuates it to the Jury. The whole tenor of his speech is, that somebody was bribed; he dare not say it was Mr. Littlejohn. I don't speak merely of personal bribery, but also of any conduct unbecoming a legislator; and on this point we challenge scrutiny. And the gentleman can go through with his examination to show that Mr. Littlejohn or anybody else was cognizant of these facts. But they do not expect to reach that point. They propose to show that there was corrupt legislation; that these measures were unwise and imprudent; and because Mr. Littlejohn was a member of the Legislature, and had the audacity to speak and vote upon them, that he

was prominent in the corrupt legislation. And yet Mr. Littlejohn, in his personal character, is a pure and honest man! Now, I say, there is no such distinction to be made. If Mr. Littlejohn has received a bribe, he is not an honest man; he is not a pure man; and his personal character is as corrupt as his official character. He is dishonest if he has sold the interests of the State for money, or for personal considerations; there is no such subterfuge here. You have got to show that he was connected with some bill that passed the Legislature and voted for it, influenced by corrupt appliances; or that he, being interested in the measure, attempted to use these appliances upon his brother members. It is not enough to show that he spoke in favor of a measure; because that is his right and his duty. It is not enough to show that he offered from the Governor; members of the Legislature may honestly differ from the Governor. That is not the point. The point, I repeat again, is what they seek to avoid, and not to meet.

Mr. WILLIAMS—My learned friend does not seem to understand me yet. Gentlemen sometimes think it proper to use gentle language, when they can do so, and such language is generally understood, I believe, by gentlemen; but the counsel sees fit not to understand me, or he is endeavoring very ingeniously to draw us from the real issue. Now, I will put an end to this misunderstanding here by a few words, and tell the gentleman here now that we will prove these measures to have been corrupt measures; and we will prove that Mr. Littlejohn was one of the principals—a chief in that corruption; and if the counsel sees fit to say that because Mr. Littlejohn is a corrupt legislator that he is a bad father or a bad husband he is at liberty to do so. When the counsel says that we concede that he is an honest man, I say that no such concession can be drawn from anything that fell from my lips. The counsel must understand that we propose to prove Mr. Littlejohn to be the chief of those corrupt men who passed those corrupt measures.

RULING OF THE COURT.

THE COURT—We have desired to have distinctly presented the scope and extent of the defense which is introduced here, for it is important for us to get at the precise issue, and to know what is to be tried and what we are called to pass upon. That involves necessarily the construction of the article in question, and the character and purport of the alleged libel. The libel complained of is in the following words:

"A correspondent earnestly inquires our opinion concerning the nomination for members of the Legislature of D. C. Littlejohn, an Oswego and Austin Myers at Syracuse. On this subject our opinion has been so often expressed that it cannot be in doubt. Both these persons were prominent in the corrupt legislation of last Winter. Accordingly, both of them ought now to be defeated. Or, if they must be sent back to pursue their career at Albany, it should not be the work of Republican voters."

That allegation is a charge of personal corruption in respect to the plaintiff; that he "was prominent in the corrupt legislation of last Winter." And involving that proposition, and stating that as of fact, it is not, in my judgment, a defense that the legislation, with respect to other persons, and other parties, and other subjects, was of an improper or corrupt character. To impute this charge is to impute personal corruption to the plaintiff; and I hold, therefore,

First: That the publication involves a charge of personal corruption, and can only be sustained by proof tending to show that the plaintiff acted and voted under mercenary appliances, or, in other words, that he was bribed to vote and act as he did; or that he derived some personal advantage from the acts or the votes he gave.

That is my judgment of the character of this libel.

Second: Now, then, if that be so, I hold that it does not sustain the defense to show that the Legislature was reported and believed to be corrupt; or that other members acted under corrupt influences; nor that such legislation was in fact, or was believed to be injurious

to the public and only designed to advance private interests.

That is my judgment upon that proposition. It follows, then, if that be so, that the matter set forth in the 3d and 4th answers which set up corrupt legislation in general terms; and that Mr. Littlejohn voted and acted in this Legislature, constitute no defense, and no proof can be given under these answers. I decided last night, in overruling the motion to dismiss the complaint, that it involved a personal charge; and also that the publication was not a privileged one. The first answer sets up that the publication was a privileged one. Upon that subject I hold

Third: That the publication is not a privileged one on the part of the defendant, as the editor of a public journal. The press to comment fully and freely upon public characters, from the President down, and to utter these things with the utmost freedom—to charge official men with incompetency and imbecility, with ignorance or corruption—to charge judges with ignorance, incompetency, or venality—and the proof of the truth of any of these allegations is a perfect defense. But the press has no right, under its guaranteed freedom, to publish what is not true. It has no right to do that which shall be an injury to the country, or which shall wrongfully assail private character. These assaults on individuals or upon private character do not become privileged because they are uttered by the editor or proprietor of a newspaper. They have large protection and large immunities, and it is right they should have; but they do not extend to the length of making publications of this character privileged within the rule.

Fourth: It follows, therefore, that the matters set forth in the first, third, and fourth answers constitute no defense; and therefore, as I conceive, no proof can be given under them.

The proof must be confined to such allegations as impute improper, wicked, or corrupt conduct to the plaintiff; and in this case, the second answer, as I understand, substantially does make that allegation. I hold, therefore:

Fifth: That the proof must be confined to the second answer, and must be such proof as will tend directly to prove that the plaintiff wickedly, willfully, and corruptly voted for those acts which are set forth in this answer, and they can only be supported by proof of personal corruption, or to such evidence under the fifth answer as is competent in mitigation.

In that aspect of the case, this question is inadmissible. Under these propositions, the proof must necessarily confine itself within the line of evidence which I have indicated.

The defendant excepted to each and every one of the foregoing propositions separately.

Mr. PORTER—Do I understand your Honor to hold that when we charge corrupt legislation, and that the plaintiff corruptly advocated it, we cannot prove the truth of the entire proposition?

THE COURT—You can prove that he was corrupt by appliances or influences made to him, but you cannot prove the proposition that the legislation was corrupt, and that he advocated and took part in that legislation.

Mr. PORTER—I submit to your Honor that the libel divides itself into two branches. The one charging that certain measures were procured by corruption; the other is that the plaintiff corruptly advocated them. According to the construction your Honor gives to the article, I submit that it is perfectly competent to prove the truth of each branch of the proposition. If there were doubt on the subject, the plaintiff has solved it. He has introduced in evidence another article, containing similar charges, by way of aggravation of damages, and it is well settled by the authorities that we have a right, without any plea, to prove the truth of any other libel read in evidence in aggravation of damages. I am sure I must understand your Honor's decision. Does my friend upon the other side

mean seriously to claim that we are not at liberty to prove the truth of the publication alleged to be libelous? On the contrary, he told your Honor that if driven to it, he should admit that the legislation was corrupt, and he admitted if it was corrupt, and the plaintiff corruptly participated in it, then our libel was justified—it ceased to be a libel. It may be better here, for the purpose of avoiding misunderstanding, to state more fully that my learned associate has done what we purpose to prove; and how we purpose to prove it. Our charge in the article complained of was of a corrupt legislative combination, as your Honor construes it. Assuming that construction for the purpose of the argument to be correct, we propose to prove it—and that the plaintiff was one of that corrupt combination. We charge that it was a combination to defraud the people of the State and of the City of New-York; that it was entered into and consummated for private, unworthy, and corrupt ends. We propose to prove it. How? We must first characterize these acts with corruption, and it is upon the evidence that the Jury is to characterize them. We must then characterize the actors; and if proved to be corrupt, one of them, at least, is to be characterized by the Jury. And how is this to be done? My learned friends on the other side say, "You cannot penetrate into the secrets of the plaintiff's heart; and as you cannot, you can found no judgment or verdict upon the fact of corruption." This is a proposition no lawyer will seriously advocate for one moment. The gentlemen call upon us to produce the witness who has ever touched the palm of De Witt C. Littlejohn with a bribe. *They may call for it—the law does not. The law calls for the corrupt act; and the act, which otherwise might be lawful, becomes corrupt by the corrupt intent.* To illustrate: We have proposed to prove, as stated by my learned associate in the opening, that certain railroad bills were proposed in the House of Assembly for private advantage, and in fraud of the public. We propose to show that there was a corrupt combination for the purpose of passing these bills between members of the House and other persons not members of the House, but who were engaged in corruptly influencing them. There were actors without—there were actors within. They had a common purpose; and the purpose of neither was the good the country, but private advantage. We propose to show that these bills cost the people between two and three millions of dollars, voted away by Speaker Littlejohn and his confederates, for no purpose, except deliberate profligacy and the profits to be derived therefrom. Now, Sir, if this be true, is it no defense? I aver that we establish its truth, if we can prove to the satisfaction of the Jury, that the corrupt intent consisted simply in this: That of the millions thus taken from the people, \$10,000 should go to the brother, and \$10,000 to the brother-in-law of the plaintiff! When we prove these facts, it is for the Jury to say whether there was a corrupt motive for the Speaker's votes. When we find that the act was manifestly against the public interest; when we find that men were bought and sold like slaves in the market; when we prove that this was done publicly and openly, and under the eye of Speaker Littlejohn; when we prove that, seeing these things, he consented; when we prove that the Governor of the State arrested the corrupt bills by the veto power; and when we follow it up by proof that the plaintiff left his place in the Speaker's chair for the purpose, as a disputant in the arena, of arguing the question involving practically the issue whether his brother should receive \$10,000, and his brother-in-law \$40,000 more, of the profits of this iniquitous legislation—do these facts constitute no defense? Why, Sir, is it possible that having alleged, we may not prove them? When we charge that men are bought and sold, may we not prove it? When we charge as you hold, that Mr. Littlejohn was corrupt, may we not prove it, as

we prove any other fact, by circumstantial evidence? Have we not to give this Jury the benefit of the light of all the surrounding circumstances, which will enable them to judge of the motives of the actors? How are we to arrive at that, your Honor? When we show that the measures were notoriously corrupt—that it was so charged on the floor of the House, and that Mr. Speaker Littlejohn undertook to defend the bills on frivolous and unworthy grounds; that he voted for them, used his influence for them, and joined issue with another department of the Government to force their passage, will your Honor say that we do not establish corruption, because we do not trace the bribe directly to his private pocket? You hang men on circumstantial evidence! I ask, then, on what principle it is, in a case where the very *gravamen* of the accusation consists in the intent, that you will not receive circumstantial evidence to establish the intent? Your Honor, I understand, gives a very limited definition to the term corruption. I submit, Sir, that it has never been held, either upon the trial of an impeachment or upon a criminal trial for corrupt action, as a legislator or a public officer, that you were not permitted to leave to the tribunal that is to pass upon the fact, the determination of the motive of the act and its circumstances. Your Honor proposes in the first place, if I understand your ruling, to exclude the evidence to show that there was the corruption which we charge, and then to exclude the evidence of the plaintiff's participation in that corruption; but you offer to us the privilege of proving that some man advanced to him with a bribe; tendered it, and that he accepted the tender and pocketed it! If you look at our Statute of bribery even, you will find no such limitation there.

Corruption and bribery are two things. When you charge a corrupt combination, you do not charge a criminal offense under the statute; when you charge the act of bribery, you charge an indictable crime. I submit that the ruling which your Honor proposes to make is at war with every decision which has ever been made in this country, or in any country, upon a question like this. I am surprised, Sir, that the ingenious presentation of this case by my learned friends has withdrawn your honor's attention from the principle upon which cases of this kind rest. I never before heard it suggested in a Court of Justice that, in this country, and in a civil action, you could not prove the truth of the matter alleged in the libel—a charge involving in itself the very matter complained of. You cannot detach these sentences; the whole may be true, or a part may be true; but whether the whole, or a part only, is to be determined by the Jury on all the evidence adduced. Now, Sir, I submit that it is entirely proper for us to show—if, as I suppose we can—that Mr. Littlejohn was elected for the express purpose of carrying out engagements in regard to this legislation; and that the men who were the prominent actors in procuring these measures were prominent actors in procuring him to be renominated and reelected, and in placing him in the chair of the presiding officer of the Assembly. I suppose it to be entirely competent, under your Honor's construction of this libel, for us to prove what the motives were that influenced those who voted for those measures—not one but each, and all, if we can.

Your Honor holds that there will not be complete justification, unless we bring home to him the corrupt intent. In that we concur. But we claim that this is a question for the Jury, to be determined upon the evidence. The corrupt intent is an inference from the facts to be drawn by the Jury, and not a presumption of law, to be deduced by the Court. I suppose it to be competent for us to prove that votes in support of these measures were openly bought and sold. I suppose it to be clearly, undeniably competent for us to prove that the vote which Mr. Speaker Littlejohn cast, and the speech which he delivered, put into the pockets of his brother and brother-in-law \$80,000. It

is a question of fact for this Jury whether that was his intent—whether his purpose was to defraud the people and to benefit the members of his own household. I submit there can be no question as to what would be the inference from the facts proposed if proved, for no two honest men would differ as to the deduction. I admit it would be convenient to the counsel on the other side to exclude this evidence. They invited us here, with the assurance that they were prepared to meet our justification. On a previous occasion they moved to strike out the defendant's answer. The motion was denied, and each of these four answers stands by the previous judgment of the Court. Now they propose to make for us a new issue, and that is, whether De Witt C. Littlejohn was bribed; and also to prescribe the mode in which we shall prove it—by calling some subscribing witness to the fact. There is no such rule of evidence.

If I am right in supposing that we have charged corruption in the answer, will your Honor say that we are not permitted to prove it? But if we had not charged it, we should in this case be at liberty—with a justification or without a justification—to prove the truth of the allegations. It is competent evidence in mitigation of damages, and the Jury have a right to see the circumstances under which this article, alleged to be libelous, was issued to the world. If it was through the wrong, or even the indiscretion of Mr. Littlejohn, it is a question which the Jury have a right to consider in determining the amount of damages, even had we no justification upon the record. If he, by his public act, in voting \$80,000 into the pockets of his brother and brother-in-law, gave occasion for us and the public at large to be misled, he is not entitled to the same measure of damages that he would be, under other circumstances. If it be established that the legislation was corrupt, and that the measures which rendered it infamous were those which were carried over the Governor's veto by the personal vote and voice of the plaintiff, he is not in a condition in which to claim from the Jury the same measure of redress for the supposed wrong that he might if he could have said, "I had no participation in this matter." I confess, Sir, I am taken by surprise at the doctrine advanced—and I hardly know how to meet it, because it is so completely opposed to those well settled rules upon this subject, as I understand them, that it scarcely needs to be met by the views I have suggested. It seems to me it must be clear to your Honor that this evidence does tend to establish the truth of the matter charged as libelous—that from the facts to which I have adverted, in conjunction with the other facts detailed in the opening, the Jury have a right to presume that either bribed or influenced by personal motives, by hopes of ambition, by a desire to serve his friends at the expense of his country, or by desire to promote the interests of his party at the expense of his country, and either of these is clear, manifest, unquestionable corruption. Does your Honor believe that at any fire-side in the State of New York, two men can be found to differ upon the question; legislation for the private good of other parties to the prejudice of the public is corrupt legislation? It is not necessary that it be for his own private emolument. If I for the purpose of benefiting another, sell my soul or my vote, I am corrupt. It matters not in this respect who is to be benefited by it. Is the motive corrupt? Not—was the act a bribe? Under your Honor's decision no officer can in any event be charged with corruption, unless you can prove a direct and personal bribe! The Press of this country is muzzled from this time forth, and corruption may walk forth unabashed and unrebuked; it has been furnished with a shield here which will protect it everywhere. My learned associate refers me to the definitions in the books of corruption. I cannot stop to read them or to debate what constitutes corruption. We have never yet heard the suggestion

from the lips of man that a breach of a public trust was not corrupt, or that casting a vote against one's conscience was not corruption; that falsehood to the constituency who elected an officer to the Assembly is not corruption; that falsehood to the State in whose capital a man sits as presiding officer of a deliberative body is not corrupt. We have not charged bribery. We do charge corruption. And if we shall prove that corruption by bribery, it does not weaken our case. Our only reason for refraining to specify the particular forms of corruption is that some of our witnesses are adverse to us, and what they will prove we do not fully know. But we do know that we can prove facts, which if uncontradicted will leave no two honest men at variance as to what was the motive for the official action of the plaintiff who has invited us here to investigate it, and now seeks to shun investigation.

Mr. SEDGWICK—It is a pretty early stage of the case to argue an appeal from your Honor's decision, but, if such is to be the order, I desire to say a word. I say no fair-minded man can read the libel for which we have brought this defendant into Court, without giving it the construction which has been given to it by the Court. It is in every sense a reasonable, just, and proper construction of the language. It is what the author meant when he wrote it, and what he leaves his counsel to disguise. Now, if that is a proper construction of the libel, if that is what he meant to charge, I say it is entirely immaterial what is the character of the legislation which they seek to bring in here. A man may be just as corrupt in voting for a good measure in the Legislature as for a bad one; it is the motive that operates upon him that is to try that, and not the character of the legislation. If it had been just that railroad bill that Gov. Morgan would have drawn up, without any object or interest, of course, or any personal consideration; if it had been, for instance, the bill overruling the Court and organizing the Ninth-avenue Railroad, it would not have been the question whether that was good or bad, but whether Mr. Littlejohn's votes upon it were cast upon public grounds or upon private grounds? whether cast for what he believed to be the public interest, or what he knew to be his own corrupt personal interest? I don't confine the question to a question of bribe, nor does the Court; it is a question of impure, personal, interested motive, operating upon him. It matters not whether the bill was drawn by the Governor in the Executive Chamber, or whether concocted by the men who have been named here this morning as those who concocted the corrupt legislation for the City of New-York. It is a matter entirely indifferent. The argument of the counsel who has sat down is precisely the same argument, presented before, only perhaps more compact, and in a terser form. He proposes to prove that the legislation itself was corrupt, which it may be in various ways. It may have been gotten up by interested parties, deceitfully and corruptly; it may have been carried through the Legislature by wholesale bribery of others, so that three-fourths of the members who voted for the measure were directly bribed for their votes; and yet a man may have voted with these corrupt members, and may have advocated the measure, and still be as little liable to the charge of bribery or corruption as anybody who voted against the measure from the beginning. There is a distinction. It is the motive which operates on the member who gives his vote in a particular case, that decides whether it is a just, fair and honest vote for what he supposes to be the best measure that can be procured—or whether it is cast without regard to the merits of the question and for some corrupt personal motive. Now, here is a distinction which the counsel wholly loses sight of. He endeavors to put it one side; to put it out of the case and to argue that if the legislation was bad, or if any of the members concerned were guilty, then were all guilty

of corruption and therefore could be libeled in the manner in which Mr. Littlejohn has been libeled by the defendant in this case. Now look at this second answer; it is the only one left in the case, except the 5th; and you will see, they have there specified the various acts of legislation which they say are corrupt. I undertake to say in reply to what has been suggested by the counsel; that in no one of these measures of legislation is any relative of Mr. Littlejohn interested to the amount of \$40,000 or 40 cents, or ever has been. We desire to do away with that, and that when they come to the proof we shall see what there is of it. I desire to do away with the impression that is sought to be made upon the Court, by the assertion in such broad, emphatic terms. There is not one word of truth in it. We challenge investigation, that anything or anybody connected with him has operated in the least degree, in the remotest manner, upon him in giving the vote which he gave for these measures. We do not pretend to say they are shut out from testimony; that is not the purport of the decision; but it is, that they shall prove what they have charged. The difficulty is, the counsel says they have charged one thing, and the Court has given a different construction to the language they have used. If the Court is right, then this evidence about which they talk, unless it goes to the charge of personal corruption, personally interested motives by bribery or otherwise of the plaintiff, is entirely foreign to the case, and there is no reasoning or authority that can alter this conclusion. The counsel insists upon a construction of the libel, which I say is an unfair, disingenuous, dishonest construction of the language. It is not what was intended at the time it was written. There is where we differ. The evidence that would be competent to show corrupt legislation, then, is an entirely different class of evidence from that which goes to show that Mr. Littlejohn is a corrupt legislator; that his motives were bad, or that he was bribed, or operated upon by appliances that were improper to be brought to bear upon a legislator. If the libel is what they say it is, then our cause of action fails entirely, and we are not entitled to sustain this action, because one member of a Legislature cannot maintain an action which charges legislative corruption on the whole body; it is entirely too general. If their construction of the libel prevails the suit must be dismissed. So that, after all, we necessarily come back, in the discussion of this question, to the point, what does the libel, fairly construed, mean? If it means what we claim, then it excludes all this mass of evidence that is offered as to how these Railroad bills were got up; who was interested, and what was done by other parties, as entirely foreign to the case. We come directly to the point whether Mr. Littlejohn's votes were corrupt votes? Whether he was affected by corruption or venality, or by personal, unworthy, illegal, interested motives; and that is the principle that is to control the evidence in their case. That is, to draw a line between this great mass of evidence which is entirely foreign to the case and that which goes to bring home to Mr. Littlejohn corrupt, or venal, or interested motives in the votes which he gave.

THE COURT—It would doubtless be no impediment on the judgment or discrimination of any man to admit that his views might be somewhat shaken by the very ingenious and able argument of the Counsel for the defendant—an argument that I listened to with great pleasure—yet I am not shaken in the view which I take of this case; and have only to reiterate the decision that I have already made. This question, it seems to me, might have been decided before we came down to this trial, upon a demurrer to the answer which would perhaps have settled the legal principles under which this trial should take place. But the question is here now, upon the pleadings as they exist, and must be disposed of. But I will not say that my opinion may not change hereafter, upon further reflection, or further argument; but at present

it is decided, and clear, that the construction which I have given to this libel, is the true construction; and being so it involves a charge of personal corruption, and is only susceptible of defense by proving a state of facts that brings it up to that point of proof. It is not enough that you make proof of general corruption in the Legislature; that 10, 20 or 50 men were personally corrupted; that does not show that the plaintiff in this case was actuated by corruption or mercenary motives in the part which he took in that legislation. That would be trying his case while you tried the matters and case of other corrupt men; and no principle of justice, I think, would authorize that. This inquiry would be undoubtedly a very interesting one, and a very important one; and I may confess to a very pardonable curiosity myself to have this whole investigation opened up, and the public would doubtless receive a benefit from it. It would require doubtless no great stretch of the imagination to conceive a state of facts which would both astonish and shock the public mind. But this is not the arena in which these things are to be tried. We are not engaged in a legislative investigation, we are trying the rights of an individual, a pure question of libel between two private parties; and in so trying, in accordance with the rules of law, we are, in my judgment, confined to the precise issue, which I think is only legitimate before this Jury, and which I have indicated in the decision, that these offers are not proper; but the proof must be confined to the precise point which I have indicated in deciding the question.

After a short consultation, the defendant's counsel made the following offers to prove:

OFFERS TO PROVE.

First: The defendant offers to prove that the acts set forth in the answer were severally passed by the votes of members of the Assembly, of whom a majority were bribed to vote therefor, and who voted therefor corruptly; and the defendant claims that this proof is admissible for the purpose of justifying a portion of the matter charged as libelous, proposing to follow it up with proof justifying the residue.

Excluded. Exception for defendant.

Second: The defendant offers to prove the same facts in mitigation of damages.

Excluded. Exception for defendant.

Third: The defendant offers to prove the same facts for the purpose of showing the truth of the article not embraced in the complaint, but read in evidence in aggravation of damages.

Excluded. Exception for defendant.

Fourth: The defendant offers to prove the same facts, and that the plaintiff voted for and supported in debate the passage of those acts, with notice that a majority of those who supported them were bribed, and that certain of the parties soliciting their passage and seeking the benefit thereof had bribed them, claiming that this evidence is admissible for the purpose of justifying the article alleged to be libelous.

Excluded. Exception for defendant.

Fifth: Offers same facts as in last proposition in mitigation of damages.

Excluded. Exception for defendant.

Sixth: Offers same facts to show the truth of the article from THE TRIBUNE read in evidence in aggravation of damages.

Excluded. Exception for defendant.

Seventh: Offers to show that certain members of the Assembly who voted for the Railroad bills mentioned in the answer did so under and in pursuance of a corrupt agreement with parties named as grantees of the franchises conferred in the acts, to apportion and divide the proceeds of such franchises exceeding two millions of dollars between them and private friends of such members, embracing among others the brother and brother-in-law of the plaintiff; and that the plaintiff, with notice of these facts, and for the purpose of securing such benefit to his brother and brother-in-law, and

knowing that such bills were prejudicial to the public interest, voted for and advocated them in debate, and exercised his influence over other members of the House to secure their passage—the defendant claiming that this evidence is admissible in justification of the charge of corruption.

Excluded. Exception for defendant.

Eighth: Offers to show the same facts, with the further fact that the plaintiff in violation of the rules of the House, permitted his brother and brother-in-law, and other parties to be benefited, to be admitted upon the floor of the Assembly during the sessions thereof, when they were not entitled thereto; the defendant claiming that from all these facts the Jury would have the right to infer a corrupt intent on the part of the plaintiff.

Excluded. Exception for defendant.

Ninth: Offers to show all the facts stated in the foregoing propositions. Claiming that the Jury have a right to infer therefrom, that the plaintiff in voting for said acts, respectively did so from corrupt motives and for private objects in violation of his oaths as a member of the Assembly.

Excluded. Exception for the defendant.

We claim that it is a question for the Jury, whether the article claimed to be libelous, charged the plaintiff with corruption.

The plaintiff's counsel retired for a short consultation; and when they returned made the following objection:

The plaintiff objects to these propositions, and each and every one of them; as inadmissible in evidence under the ruling of the Court; except that the defendant may be allowed to show that the brother and brother-in-law of the plaintiff, or either of them, was interested, *to the knowledge of the plaintiff*, in any stock in any of the roads^{*} named in the defendants' answer to his complaint, and that his vote upon any of the said bills was influenced by such knowledge.

The Court sustained the objection, under the ruling already given.

Exception for defendant.

Mr. PORTER—We offer to prove further, the facts stated in the first defense.

Excluded. Exception for defendant.

We offer to prove the facts stated in the third defense.

Excluded. Exception for defendant.

We offer to prove the facts in the fourth defense.

Excluded. Exception for defendant.

We also offer to prove them separately in mitigation of damages.

Excluded. Exception for defendant.

TESTIMONY OF MR. CONKLING CONTINUED.

Cross-examination by Mr. Sedgwick.

Q. Did you understand Mr. Littlejohn to state that he had any conversation or personal interview with the Corporation officers of the City of New-York?

Objected to on the ground that the witness had already given the language. Objection overruled. Exception for defendant.

A. I understood Mr. Littlejohn to say that he had information from the public authorities of the city, but not that it had been given in any direct personal interview or communication.

Q. That he had been informed that such were their views? A. That he had information on that subject.

Q. Did he say he had seen or had any direct communication with Mr. Bronson? A. No, Sir, I did not understand him to make any such assertion.

Q. Do you remember whether, when you made the statement that these judgments were invalid and fraudulent, and would be set aside—do you remember whether Mr. Littlejohn was in the House? A. I am very confident he was.

Q.—Did you see him. Do you remember that you

saw him? A.—I know that the remarks, which I have referred to as having been made by the Speaker, were made in reply to a speech of my own, in which I made these statements—that these judgments were founded in fraud and collusion; and his reply to that was, that the Corporation Counsel had pronounced them good and valid judgments, as he was informed—not informed personally, but that he had this information from the public authorities.

Q.—That was in reply to you? A.—That was in reply to my speech.

Q.—Now, Sir, at the time of that debate, do you remember that a member of the House rose and stated that Mr. Littlejohn was a member of the Board of Land Commissioners, and asked him to state what he knew of the matter? A.—I think nothing of the kind occurred.

Q.—Have you any memory on the subject, whether such was or was not the fact? Whether he was not directly appealed to by a member of the House, as one of that Board, for his knowledge on the subject? A. My recollection is distinct as to the order in which the debate proceeded; and it is, that the Speaker followed me immediately without any such appeal as has been referred to being made by any member.

Q.—Then there was no such appeal made? A.—To the best of my knowledge and recollection no such appeal was made.

Q. Have you recently examined any report of that debate? A. I have not.

Q. Have you had any personal difficulty with Mr. Littlejohn? A. I have had controversies with him in the House of Assembly of this State.

Q. Were they of a personal character? A. Perhaps in one instance they might have been. Mr. Littlejohn made charges against me.

Q. Never mind the cause. Did you attend the caucus that was held at the last Legislature to oppose his election for Speaker? A. I did not. I was not in Albany at the time at all.

TESTIMONY OF HORACE GREELEY, SWORN FOR DEFENSE.

Examined by Mr. Williams.

Q. You are the defendant in action? A. Yes, Sir.

Q. What were your personal relations with Mr. Littlejohn on the 26th day of September last, and prior to that time?

Objected to. Objection overruled.

A. I believe they were good; always good so far as I can recollect. We have been acquainted about 20 years, and I have no knowledge of any personal difficulty, or political, between us during that time, except in regard to these measures of that Legislature.

Q. Had you any personal unkindness toward him, growing out of that matter? A. I had not, Sir.

Q. Or at the time of this publication of the 26th of September? A. No, Sir.

Q. Had you at any time any malice toward Mr. Littlejohn, of any kind, or nature, or description, or for any cause whatsoever? A. I am not aware of any.

Q. On the 26th day of September, at the time of the publication of the article in question, I want to know if you believed the statement to be true?

Objected to as incompetent. Objection overruled. Exception for plaintiff.

A. Yes, Sir, I did.

Cross-examination by Mr. Sedgwick.

Q. You say you had no malice or unkindness except what grew out of these bills? A. I am not aware of any—I mean previous to this time.

Q. Now, Sir, did you not attack him in your paper upon grounds entirely personal previous to that time? A. I am not aware that I so attacked him.

Q. Did you before or immediately after this publication, without any subsequent ground, attack him for private transactions not connected with these political acts? A. I think not, Sir. In the article partly read by Mr. Marsh, *The Times* stated in a letter from

* The Belt Road, in which Messrs. R. H. Thompson and F. S. Littlejohn are stockholders, is not named in the said answer.

Oswego, that Mr. Littlejohn had been making a very severe attack upon me; had "handled me without gloves," and so on; and that his character was established in Oswego. Well, Sir, I had understood that a requisition was once issued by the Governor of Illinois for Mr. Littlejohn, and I said if the Governor of this State had answered the requisition made by the Governor of Illinois, his character would have been established in Chicago as well as in Oswego. But I was mistaken; there was no requisition for him.

Q. Had you any information, except in general terms, of what he had said in regard to you? A. I had the information read last night that I was "handled without gloves," called a calumniator, &c.

Q. Had you attacked Mr. Littlejohn before the 26th of September by name? A. I think never, separately from others; I was repeatedly asked, are you in favor of reelecting those Republicans who voted for those corrupt measures? and I said, never.

Q. The question I put was, whether you had attacked Mr. Littlejohn by name in your paper repeatedly before the 26th of September, charging him with corrupt legislation in connection with those measures or any others? A. In the article read he was named.

Q. I mean prior to September, and during the Winter of 1860? A. I have no recollection of it; I might have said so.

Q. Don't you remember whether you had named him? A. I do not.

Q. Do you refer to private communications when you say you had so often stated your opinions? A. I referred to publications.

Q. Then you had published your opinions before? A. This article does not refer to him alone.

Q. I mean whether you included him among other persons? A. I did, Sir.

Q. Had you been inquired of with regard to the propriety of Mr. Littlejohn's nomination? A. No, Sir, but with regard to the propriety of Republicans voting to reelect members who had supported those measures.

Q. Had you been inquired of specifically as to the propriety of Littlejohn's nomination? A. Littlejohn and Myers, I think the inquiry was in that case.

Q. This was a private inquiry; was Mr. Littlejohn named in it? A. I am quite sure he was.

Q. Who was it written by? A. I don't remember.

Q. Was it a nameless man? A. Well, Sir, your questions force me to say that it so happens that I did not write the article on which this suit is founded, but I do not wish to evade any responsibility for it.

Q. Do you know whether the writer of that article had any malice? A. I think he did not even know Mr. Littlejohn.

Q. Who was the writer? A. Mr. Charles A. Dana, one of my associates.

Q. Who was this correspondent? A. I don't know.

Q. Then you never saw the letter? A. No, Sir, I did not; but I know that similar inquiries were made of me.

Q. Have you ever withdrawn the charge contained in that article in respect to the Governor of Illinois on finding that it was untrue? A. I offered to withdraw it before my suit was commenced; I offered to state the exact fact.

Q. Offered to state what fact? A. I don't wish to call other people's names here.

Q. Did you offer to retract it, without qualification as to Mr. Littlejohn? A. Certainly, as regards Mr. Littlejohn.

Q. Without qualification? A. I had to state to him —

Q. The substance of it is, you offered to retract as to him by stating the facts as to another? A. There was another person whose name I did not wish to mention.

Q. Then to make an unqualified retraction you never did offer? A. So far as concerned Mr. L., I did

offer to retract, and to say I was under a misapprehension when I made the statement.

Q. Why not retract it when you found it was wrong? You had control of the columns of your paper, hadn't you? Why not state that you were mistaken, if you had no malice? A. I should very gladly have stated so. You will see the reason why I did not, in a letter which I wrote to Mr. Marsh.

Q. Why could you not, when you found out it was not true, take it back and say it was not true? A. I had not made a false accusation; I had been mistaken in regard to the man.

Q. The question is why, having found out the accusation against Mr. Littlejohn was unfounded, you did not retract it voluntarily in your paper, over which you had control? A. Well, Sir, because I could not state all the circumstances without injuring another person whom I wished very much not to injure.

Q. Could you not state that your information with regard to Mr. Littlejohn was unfounded, and stop there? A. It was not exactly unfounded; it was mistaken.

Q. Mistaken by you or the person who informed you? A. I certainly thought I was right when I made the statement.

Q. Was you ever told that Mr. Littlejohn was sent for by the Governor of Illinois? A. I now think, Sir, that when the information was given Mr. Littlejohn was not mentioned; but I certainly thought I was correct as to the complaint I heard of our Governor for not answering the Illinois requisition.

Q. You then did publish that article making that accusation, that Mr. Littlejohn had been indicted in Illinois, without having been so informed by any person? A. I don't think the accusation was so broad as you state it.

Q. When you found and was informed that the person communicating the information had not mentioned Mr. Littlejohn, why didn't you say that in your paper, and thus end the matter? A. Because I felt that it was my right to state all the circumstances which led me into that mistake, so as not to expose myself unjustly to the charge of having fabricated the charge; and I thought Mr. Littlejohn would not desire to have me state them.

Q. That was the reason you did not take it back? A. I was then threatened with a libel suit; still, I offered then to make the statement.

MR. MARSH—Q. Have you got the letter which threatened you with a libel suit? A. No; I suppose you have it.

Q. Was you threatened with a suit? A. I so understood it.

Q. Were you not informed distinctly that if you would retract the charges that was all that was asked of you?

[Objected to on the ground that the paper is in existence, and should be shown to the witness, and that the paper being in writing is the best evidence. Objection sustained.]

[Exception for plaintiff.]

Q. Have you the letter which Mr. Marsh addressed to you? A. I have not here; I suppose I have it somewhere.

Q. Is that a copy of it [showing witness a paper]? A. I could not remember exactly.

Q. Is that your letter? [Showing witness another letter]. A. That is my handwriting, and that is the letter I wrote.

Q. Well, is that a copy of the other letter? A. I presume it is, but I don't know.

The Counsel for the defendant objected to the paper which was a copy, on the grounds: First, That it was not proved to be a copy. Second, That if proved to be a copy it is inadmissible for that very reason.

Objection sustained.

The Counsel for the plaintiff then offered in evidence the letter of Mr. Greeley, which Mr. Greeley himself read to the Jury as follows:

OFFICE OF THE TRIBUNE. }

NEW-YORK, Nov. 26, 1869. }

GENT. MEN: I have your letter of the 24th this moment.

A single allusion to Mr. Littlejohn in *THE TRIBUNE* occurs to me as having given warrant for your demand. It was that in which I spoke of his having been wanted in Illinois. My authority for that statement is John Wentworth, Mayor of Chicago; but it now occurs to me that the requisition of Gov. Bissell on Gov. King was for Mr. Fitzhugh, the father-in-law and business partner of Mr. Littlejohn, not for Mr. L. himself, though I understand and believe that it was on account of partnership transactions. If Mr. Littlejohn desires that I shall ascertain and publish the exact facts in the case, I will gladly do so. I have hesitated hitherto, because Mr. Fitzhugh is not in public life, is an old man, for whom I have the kindest regard, and whom I do not wish to drag before the public in any unpleasant connection. Still, if Mr. Littlejohn desires a correction of this statement made, I will do it cheerfully, and in exact accordance with the facts.

As to all other matters which Mr. L. may have to complain of, I have only to say that I shall very gladly correct any misrepresentation I have made that may be shown to me to be such. But I cannot change my opinions with regard to much of the legislation of last Winter, whereof Mr. Littlejohn was a prominent advocate. I consider that legislation every way wrong, unjustifiable, and corrupt; and, while I do not know that Mr. L. received any money for his share in it, I deem it of such a character that it would be no less objectionable to my mind if I were convinced that he bore his part in it without hope or expectation of reward.

If you will point out to me the averments in *THE TRIBUNE* that Mr. L. demands should be retracted or corrected, I will do whatever seems to me just, but no more, because Mr. L. threatens me with a libel-suit. Indeed, it is probable that, in the absence of such threat, I might be induced to go further than I would otherwise have done. But, whether threatened or not, I shall be at all times ready to undo any injustice I may have committed.

Yours,

HORACE GREELEY.

Messrs. MARSH and WEBB, Oswego, N. Y.

Q. Did you attend the Legislative (Assembly) caucus of the last Winter? A. Yes, Sir.

Q. Did you attend it for the purpose of opposing Mr. Littlejohn's renomination as Speaker? A. For that express purpose, and no other.

Q. Did you publish, immediately preceding that caucus, a charge against Mr. Littlejohn, in your paper? A. I have no recollection of it.

Q. Which was withdrawn immediately after? A. There was something published, not immediately before that election, but earlier, which was corrected the next day, I think. An erroneous statement was made in *THE TRIBUNE*, not by me, with regard to some of these West Washington Market leases, but I contradicted it the very next day, without waiting for any suggestion from Mr. L.

Q. Was it with regard to this caucus? A. No, Sir, I think not.

Q. Was it intended to operate on that election. A. I cannot say, because I did not write it.

Q. Was it withdrawn immediately after the election of Speaker? A. No, Sir; I think it was before—many days before the caucus, according to my recollection.

Q. Were you a candidate for any office at that time? A. No, Sir, I was not. Q. Not a candidate for Senator? No, Sir, I don't know that I was; may have been spoken of among others.

Q. Hadn't you spoken of yourself as a candidate to members of the Assembly? A. No, Sir, I had not, neither at that time nor at any other time; I never solicited any member's support for that office.

Q. Were any of your partners in the paper there soliciting votes for you as Senator, to your knowledge? A. No, Sir, not to my knowledge.

Q. Not Mr. Dana? A. No, Sir, he was not there.

Q. Nor Mr. Camp? A. He was there as a member of the House.

Q. And Mr. Cleveland? A. He is our Reporter there every Winter.

Q. Has he any interest in the paper? A. No, Sir. Q. Is he a relative of yours? A. He married a sister of mine.

Q. Do you know whether either of them were soliciting votes for you at that time? A. I am very confident they were not.

Q. Has your paper since made an attack upon Mr. Littlejohn in connection with the Liverpool Consulate? A. I am not aware that it has.

Q. Did not you announce that he had declined (referring to him as a prominent politician) because he smelt fat jobs here? A. I don't recollect it, Sir; I have not published nor written such a paragraph.

Q. Have you seen such a paragraph in your paper? A. I can confidently say that I never wrote, instigated nor inserted such a paragraph.

Q. At the time of the caucus, when the nomination was announced, did you make any verbal remarks on it? A. I cannot recollect any; I was very strongly opposed to his election, but don't recollect any remarks I made.

Q. Did you oppose his election and solicit votes against him, charging him with the same corruption in office which you have charged in your paper, in order to defeat his election?

Objected to as to the general form. Objection overruled.

A. I have no recollection of saying so, but I did oppose him on account of those measures, and I probably said so, though I have no recollection of it.

Q. To members of the Legislature whom you talked with in opposing him, did you repeat in substance this publication? A. I cannot remember the words; I have no recollection of the precise words I used.

Q. Don't you know generally what arguments you used against him—whether in substance you did repeat what you had previously published in your paper? A. I will tell you what was the substance of what I said. I thought Mr. Lucius Robinson an honest, upright legislator, and I had not the same opinion of Mr. Littlejohn.

Q. That generally is what you said? A. That is, in my judgment, what I said.

Q. That, in your opinion, Mr. Lucius Robinson was an upright man, and Mr. Littlejohn was not? A. I said legislator.

Q. Did you not say in substance that he was guilty of those things that you had previously charged him with in your paper?

Objected to. Objection sustained.

Re-direct examination, by Mr. WILLIAMS—Q. There is the paper of 11th of September, which was read in evidence. Is Mr. Littlejohn's name mentioned there? A. It is contained in the list of Yeas on the City Railroad bills.

Q. Is there any other allusion to it there? A. No, Sir; there is none.

Mr. Williams asked the counsel for defendant to give him the paper containing the article which was partly read the evening before, which they refused, on the ground that it had been entirely withdrawn.

The Court took a recess.

EVENING SESSION.

Re-direct continued.

Q. Between the article that appeared on the 11th of September and the 26th of September, did anything appear in the columns of *THE TRIBUNE* touching Mr. Littlejohn, that you remember? A. No, Sir.

Q. Between the 26th of September, the date of the article in question here, and the article of the 23d of October, a part of which was read last night, did anything appear in the columns of *THE TRIBUNE* touching Mr. Littlejohn that you remember? A. I remember none.

Q. At all events, you wrote none? A. I am quite confident I wrote none.

Q. The article followed immediately on the article in *The Times*, which stated that Mr. Littlejohn "handled you without gloves," and called you a calumniator? A. I am not certain about the dates. If you furnish me the paper, I can tell.

Q. Have you been sued by Mr. Littlejohn for the publication of this matter, concerning which you were

inquired of in your cross-examination? A. Yes, Sir; another libel suit is pending on that, I believe.

Q. Was that suit brought after you wrote that letter which you read. A. Yes, Sir; after that.

Q. Your comments, or whatever was published in THE TRIBUNE, was in reply to those articles in *The Times*? A. Yes, Sir.

Q. At the time of the publication of the article of the 23d of October, did you believe then what you stated in that article? A. I did.

Q. Who was your informant on that point?

Objected to. Objection sustained.

Q. You were asked upon the direct examination whether you were told what was published in the article of the 23d of October? A. I answered that I understood it so; but now believe I was mistaken.

Q.—At the time you understood it so? A. At the time I certainly did.

Q. Have you seen Mr. Wentworth since? A. Yes, Sir.

Q. The letter which you read was in reply to Mr. Littlejohn's attorneys'? A. Yes, Sir.

Q. The Messrs. Marsh and Webb, the attorneys who brought this suit, and who brought both suits? A. Yes, Sir.

Q. Where were you at the time the article upon which this suit was brought was published? A. According to my recollection, I was away, speaking; I saw the article, but it did not attract my attention until this letter from Marsh and Webb; I know I was out of town.

Q. When did you first see that article? A. I think on the second morning, while I was away somewhere.

Q. You were away, and got THE TRIBUNE, and saw it? A. Yes, Sir.

Q. From the time this article appeared, have you written or published anything concerning Mr. Littlejohn? A. I do not recollect having written a paragraph, except the article that they called attention to.

Q. None aside from that? A. No, Sir; no other.

Q. Did you write the article to which they called your attention? A. No, Sir, I did not; but I wrote the correction which appeared next day of a misstatement in it.

Q. I understand you to say an article did appear concerning this legislation, or something of that kind? A. It was concerning the West Washington Market generally, and with regard to Mr. Littlejohn, it made several statements, and among others that he had signed a particular lease to Taylor and Brennan, which I found the next day had not been signed by him, but by his predecessor.

Q. You corrected that in your next issue? A. In the next issue, according to my recollection. I think it spoke of his granting this West Washington Market lease, and the next day I think Mr. Taylor called upon me and said "You have made a mistake about Mr. Littlejohn." I looked at the documents, saw it was wrong, and corrected it.

Q. Aside from that article, has there been any allusion to Mr. Littlejohn? A. There has been a telegraphic dispatch, if I recollect right, about his declining the Consulate.

Q. You have been asked whether you opposed Mr. Littlejohn for the office of Speaker for the year 1861. Will you tell the Jury why you opposed Mr. Littlejohn?

Objected to as immaterial.

Objection overruled. Exception for plaintiff.

A. My objection was to the character of the legislation he had favored and supported, and on account of these measures I thought he was not a fit man for Speaker, and that his opponent was a better man; for he had been in the preceding Legislature and opposed these measures.

Q. Why were you opposed to these measures of which you speak?

Objected to as immaterial.

Objection sustained. Exception for defendant.

Q. Had you any other motives for opposing the election of Mr. Littlejohn to the Assembly or as Speaker than those that you have mentioned? A. I had no other motive for opposing his election to the Assembly; but it is quite possible that, after these suits, or threats of suits, there may have been a little personal feeling on my side; I could not say that I had no personal feeling on the 1st of January last. I certainly did oppose him mainly on account of our difference on these measures; but I could not say I had the same feeling toward him last January that I formerly had.

Q. Did you, at the time you opposed Mr. Littlejohn as candidate for election to the Assembly in the Autumn of 1860 believe the measures in question were corrupt measures?

Objected to. Objection sustained.

Cross-examination resumed, by Mr. Sedgwick.

Q. Do you mean to say that between the 26th of September and the 23d of October you did not write or publish any article against Mr. Littlejohn? A. I mean to say that I do not recollect any such article.

Q. Do you recollect writing an article in reply to a letter he wrote you? A. I remember such an article.

Q. Is that the article? [handing witness a paper]. A. Yes, Sir, I recognize Mr. Littlejohn's letter, and that is my article in reply.

Q. That appeared on the 8th of October? A. Yes, Sir.

Counsel for the defendant moved to strike out the above answers, as the plaintiff neither offers nor proposes to offer the letter in evidence.

Motion denied. Exception for the defendant.

Q. At what time was you in Chicago during the Fall when this paper was published in regard to Mr. Littlejohn? A. I have been in Chicago about the 1st of January for the three last years, I think.

Q. Then you had not been in Chicago for several months prior to the time when this was said to you there? A. No, Sir; that had been said to me in the Winter of '58 or '59.

Q. Then the publication was founded upon a statement made to you two or three years before? A. Yes, Sir.

Q. Did you take any means to verify your recollection before the publication of the article? A. No, Sir, because I had no doubt.

Q. Did you take any means to ascertain the fact before this letter to Marsh and Webb? A. No, Sir; I did not know it was disputed.

A. After receiving that letter, did you have any communication with Mayor Wentworth before you wrote that answer? A. No, Sir, as the letter will show; it begins, "Yours of the 24th," and it was answered on the 26th, I think.

Q. Did you meet the Committee having in charge the West Washington Market bill, and use your influence with that Committee to pass that bill? A. Never, Sir; never.

Q. Did you ever meet with them? A. Never!

Q. Never met that Committee at all? A. Never!

Q. Your recollection is good on that point? A. Very good!

Q. Did you ever publish in THE TRIBUNE, or was there ever published in THE TRIBUNE, an article approving the leasing of this West Washington Market property to Taylor and Brennan?

Objected to. Objection sustained.

Q. What was the circulation of THE TRIBUNE in September and October, 1860? A. I think in all the editions—Daily, Weekly, and Semi-Weekly—about 250,000; but whether these articles were or were not published in all, I do not know.

MR. WILLIAMS.—Q. Did you make any exertion, or did anybody, to your knowledge, to circulate in the Oswego District the article upon which this action is founded?

Objected to. Excluded.

Mr. WILLIAMS read for defendant; offered in evidence the veto of Gov. Morgan in the West Washington Market bill, and proposed to read it from the printed Senate Journal.

Objected to as not competent testimony.

Mr. WILLIAMS cited the case of Purdy agt. The People in 4 Hill, 405; and De Bow agt. The People, in 1 Denio, 14; and 19 Howard's U. S. Reports, 334 and 338; and 7 Johnson, 50 and 51; and 3 Hill, 436.

The Court said although the testimony might be competent *per se*, yet, under the present aspect of the case and the present issue, it must be excluded.

Exception for defendant.

Mr. WILLIAMS offered in evidence an exemplified copy of the preamble and resolution offered by Mr. Littlejohn as one of the members of the Board of Land Commissioners, granting the lease in question to Taylor and Brennan.

Objected to and excluded. Exception for defendant.

Mr. PORTER offered in evidence the acts in question to which the articles refer.

Objected to and excluded. Exception for defendant.

The evidence was here closed.

The Court adjourned till next morning.

THURSDAY MORNING, Sept. 12, 1861.

ARGUMENT OF JOHN K. PORTER FOR THE DEFENDANT.

GENTLEMEN: A few rough notes, made during the recess, of the topics to which I can properly restrict the discussion, will enable me, in some degree, to abridge the argument. I acknowledge the embarrassment under which we present the case, after the exclusion of the evidence on which we mainly relied. It is difficult for a lawyer to abandon in an hour the rooted convictions of twenty years. We do not readily acquiesce in what we conceive to be a departure from the settled principles of law. To our faith in them we cling tenaciously, and it fails us so rarely that in that faith we soon grow old, and part with cherished rights as with cherished friends. But we are bound by the rulings of the Court, and must discharge our duty as we may, in conformity with the decisions made for our guidance.

I have the honor to appear before you as one of the counsel and defenders of an alleged libeler. The publication complained of is in these words:

"A correspondent earnestly inquires our opinion concerning the nomination for members of the Legislature of D. C. Littlejohn at Oswego and of Austin Myers at Syracuse. On this subject our opinion has been so often expressed that it cannot be in doubt. Both these persons were prominent in the corrupt legislation of last Winter. Accordingly, both of them ought now to be defeated. Or, if they must be sent back to pursue their career at Albany, it should not be the work of Republican voters."

I read the article, and understand it. You read it, and understand it. You understand it as I do. It charges corrupt legislation at the Capitol in the Winter of 1860. It charges that Speaker Littlejohn was a prominent advocate of that corrupt legislation. So it was understood by every reader of THE NEW-YORK TRIBUNE. If there was any man who was free from all doubt on that question, it was Speaker Littlejohn. He called on the editor for an explanation or retraction. Mr. Greeley, in the noble and manly letter which he read upon the witness-stand at the request of the plaintiff's counsel, frankly stated the purpose and intent of the article. It was not to charge Mr. Littlejohn with personal corruption, but with being a prominent advocate of measures corrupt in their tendency and nature, and in the circumstances attending their adoption. That letter, which the plaintiff chose to withhold from the world, he has given to you. It confirms your conclusion. The article was intended by the publisher as it was understood by the reader, and yet you are told

by the learned counsel that the language has another meaning in a court of justice, and that, for the purpose of a libel suit, it imputes to Speaker Littlejohn personal corruption and bargaining for a bribe. It seems to be claimed by the counsel that you are bound to find the defendant guilty of a charge which upon the evidence you believe he never made, and that you are to find a verdict against your conscience and your oath, which is to rest for its support upon the oath and conscience of another. I do not believe the Court will so instruct you, but this is the theory of the prosecution.

Until 4 o'clock yesterday afternoon, I never heard it suggested by any lawyer or layman in this country, that, when in a civil action, a paper is read, which is claimed to be libelous, and the truth of which is alleged in the pleadings by the defendant, upon his coming to trial with witnesses summoned at an expense of a \$1,000, to prove the truth of the allegation, sentence by sentence, line by line, and clause by clause, to the satisfaction of a jury, the truth can be excluded in a court in which blind justice holds her balanced scales—unless the defendant shall go further and prove in addition the truth of charges he never made. Hitherto, by the common understanding of all American lawyers and jurists, it has been deemed an absolute right to aver and prove the truth of the matter alleged to be libelous. But our friends propose to inaugurate a new era in the law of libel. The Jury are no longer to read the paper upon which they are to pass. They are to find damages for an accusation, though they cannot find the accusation. On a question of doubtful intent the Court is to find the fact, and the Jury to visit upon the defendant the penalties of a wrong of which they believe him to be innocent. We were challenged by the plaintiff to prove the truth of the publication on which he counts. When we accept the challenge, and offer to prove its truth, he tells us, in substance, that we cannot be permitted to prove it, that he will elect what evidence we may, and what we may not offer, and that we may prove the truth of his inferences, but not of our allegations. You will readily perceive that, when propositions like these are entertained, discussion becomes embarrassing, as we are bound to abide by such rulings as have been made by the Court, and may yet be made in the course of the trial. Within the narrow limits assigned I shall present the case as well as I can upon the topics to which the discussion is cut down by the Court.

You will not fail to appreciate the public aspect of the grave questions involved in the issue. The fearless comments of a free press on the public acts of those you entrust with power, are your only protection against profligate legislation and official corruption and venality. Even with such exposures of malfeasance in office and partisan intrigue as you have hitherto had, and with the princely revenues of New-York from its magnificent public works, your industry is taxed four millions annually for State purposes alone. Every farm from Lake Ontario to the sea is under mortgage to-day to the tax-gatherer, not for the legitimate support of Government, but to supply the ever-recurring deficiencies of a treasury drained by corrupt legislation. You are taxed because the capitol of a free State is polluted by jobbers and money changers. Laws are enacted by the mercenaries of the third estate. Where we most need integrity, rogues thrive and honest men are in disrepute. Whoever is guilty, whoever innocent, the fact exists and is known of all men. It is matter of public history, and as familiar to every citizen as the fact that the cohorts of rebellion are now advancing in arms to subvert the Republic. Do I mistake the sentiment of this community when I say that deeply as we abhor the brazen front of treason which boldly encounters the perils of crime and war, still more do we detest and abhor the treachery, the thievery and the peculation of those among ourselves, who betray public trusts, who rifle and stab the people, and

in the house of the people. However it may be with individuals, we know the laxity of public morals prevailing among many of those who have crept into high places. It has been found that there are gold mines nearer than California, accessible to plastic consciences. Men have learned to buy their offices and sell their votes, to barter honor for emolument and conscience for coin. Human souls are bought and sold at the public shambles. In the present case we are not permitted to inquire who these men are. But we may well ask, when we are called on to silence the sentinels who should warn us against corruption, what will be our condition when you have muzzled those whose duty it is to guard us, when you have knifed the watchdogs who protect us while we sleep? You are to vindicate all rights and enforce all laws; but in doing so, and in arriving at a judgment in each particular case, you will not lose sight of what is due to the community at large, or discard from view the circumstances and surroundings which reflect light on the acts and motives of those who are arraigned before you as wrongdoers. We are to abide by the decisions of the courts, but we especially rejoice when they gladden good men—as the exclusion of our evidence gladdened the worthy gentlemen whom we brought here to reveal the doings and bargainings of the Albany lobby. How speedily the cloud rolled away which seemed before to darken the court-room.

It is because you are here in the discharge of a high public duty that I advert to these public considerations. The learned counsel seem to think that those only who hold office owe duties to the State, and that it is the duty of Horace Greeley and all else to be silent when officials speak. I hold that the highest and most important duty under the State Government is that devolved on the juror when he sits in judgment on the rights of others in a court of justice. Trial by jury lies at the basis of our whole system of law, and it is the most essential and the most honorable trust imposed on the citizen of a free republic. Legislators may make laws and unmake them—judges may pronounce decisions and reverse them—but we all feel and know that high above these in practical importance and efficient protection rises the institution of trial by jury—the time-honored safeguard of civil rights and civil liberty. This institution alone has made England a free nation against all the power of the throne. British jurors in the State Trials infused new life and liberty into the Constitution of their country. But here there is no such antagonism. The right of trial by jury is cherished by our judges and our rulers no less than by ourselves. My friends mistake, I think, when they suppose the Court will withhold from you the first question which arises in this case—whether in the article complained of Horace Greeley charged De Witt C. Littlejohn with personal corruption. I think they err in supposing that when that question is committed to you, twelve men of the County of Oswego will impute to the defendant a charge not made in the publication, or condemn him for the bold and manly utterance of his opinions of the corrupt legislation of 1860, and of those who were its public advocates on the floor of the New-York Assembly. The frank utterance of his honest convictions was what was demanded of Mr. Greeley by the 250,000 citizens who, as the plaintiff has proved, are subscribers for THE N. Y. TRIBUNE. It was demanded by a million of men, who, as the counsel tell you, are the habitual readers of that journal. The result of this trial will be regarded with the deepest interest not only by them, but by other millions whose attention will be attracted by an issue on that open and bold corruption which has brought dishonor upon our State, and has become memorable in our national history. Like the celebrated Croswell case, illustrated by the genius of Hamilton, the noblest defender of a free press, it involves principles

and rights rising in magnitude far above the issues of the hour; and it involves also the standard of integrity demanded by an American Jury of the public officer who claims at their hands the vindication of his character by their indorsement of his public acts.

You are to determine whether an American journal, in commenting upon laws vetoed by the chief magistrate, condemned by the public judgment, conceded by men of all parties, creeds and factions, to bear the brand of corruption upon their face, may unite its voice in a protest against corrupt legislation, and may, in the exercise of a fair and free censorship of the acts of public men, proclaim its opposition to all who advocated those laws. You are to determine whether the meaning of the English language is the same when you read it at your own firesides, and when counsel read it to you in the jury box. You are to determine whether this article was intended by the publisher, and understood by the reader, as an imputation that Mr. Littlejohn was bribed,—or as an appropriate comment on his public acts deeply affecting the interest and honor of the State he was bound to serve.

I admit that the obligations of public duty are too commonly ignored, and it is only on rare occasions that we are brought to feel them in all their force. They should never be forgotten by those occupying relations of trust and confidence—least of all by those claiming high and honored official positions. Subordinate only to the duty we owe the Creator, from whom we receive our breath and daily bread, is the obligation to the State and country, under which property, liberty, and life are made secure, and in whose prosperity is interwoven that of each citizen, and of all who are to succeed him in the enjoyment of the blessings of civil liberty. All such ideas would provoke only a smile from the trained politicians of the New-York lobby; but recent events have admonished even them that love of country, though it may sometimes sleep, is not dead in the hearts of the free men of the North. It is a noble attribute of our nature, sometimes wanting in politicians, but never wanting in the great body of a people. It marks even the wandering Oriental tribes. It comes to us with the sanction of religion, with the touching memories of the Hebrew maidens mourning in exile for their country, and the still more touching memories of the Redeemer of Mankind, who permitted his dearest human affections to center in the land consecrated by his nativity and his ascension.

Gentlemen, considerations like these either weaken or strengthen their hold upon the human heart, when men are brought into positions of extended influence. Self-love and selfish aspirations deepen in intensity by indulgence. Earnest and generous devotion to nobler and higher aims, the desire to advance the interests and promote the happiness of kindred and friends, classes and races, country and humanity—these, too, grow with our growth and strengthen with our strength. While the first tend to graft and falsehood—the last lead to love of truth and loyalty to right. Many of you differ widely in your opinions from Horace Greeley; but whether you judge him by the developments of this trial or those of his past life, I need not ask to which of these classes, in your judgment, he belongs. He was called upon at the threshold of an eventful life, which will be full of interest to after times, to make his election. He had occasion to consider early grave questions of right and duty, which to some of us even now are almost new. By the decision then made, we are all his witnesses that he has not failed to abide. Thirty years ago he went, with the training in integrity received by the sons of the farmers of New-England, to seek a home in the metropolitan city, from which he was destined to exercise an influence that will leave its impress on the age. He entered that city poor and penniless—but rich—in that love of truth which has illustrated all his life, and of which the publication now in question is

an evidence—rich in those high attributes of manhood, courage, love of country, love of humanity, love of right; and from that day to this, though he may often have been deceived in men, often misled in judgment, has he ever failed to be true to his convictions? Has he ever faltered in what he believed to be public duty? Has he ever been leagued with corruption, or false to the known interest of his country?

Do you believe this was the prevalent spirit of the men who voted for the Gridiron Railroad acts, and the Washington Market bill, which were read in your hearing yesterday? These are public laws, and I use them as part of my argument. Is it not well that there is at least one man—I trust there are many more—to expose the character of laws like this—to express his convictions and your own—to deduce from them the same conclusions you deduce, and to unite with you in manly condemnation of the actors as well as the acts?

It seems to be conceived by the plaintiff that the journalist who acts in the interest of the public is not at liberty to discuss the claims of political candidates, even on the ground of their previous official acts, without first holding a court of inquiry to ascertain whether those acts do not admit of explanation. Gentleman, in matters of general concern, the necessity of such an inquiry would preclude all discussion. The impending danger must be met with prompt and sudden warning. You see the flames bursting at midnight from a dwelling in which a cripple and a child are sleeping. Will you pause to inquire whether it is not an optical illusion before you give the alarm? You are in Charleston, and learn from a slave, whose lips are not admitted to the cross, and who must stand mute in a court of justice, that incendiaries are abroad, and in an hour the city will be wrapped in fire. Will you wait for better evidence until master and slaves are involved in a common conflagration? You learn that the public enemy is advancing upon the gates of the capital. Will you pause before you rouse the sleeping sentinels? You find men in public confidence bartering away the honor and interests of the State. Will you permit the traffic to go on, while you wait for confederates to turn State's evidence against each other. A candidate is on the eve of election whom you believe to be an unsafe custodian of a public trust. Will you permit him to be elected first, and then satisfy your scruples by deploring the wrong you might have averted? On questions involving the general welfare the press owes us a present, immediate duty, and it is false to its trust when the duty is postponed, whether from fear, favor, or affection. Whoever seeks places of public trust challenges scrutiny of his public acts. The judges upon the bench, my eloquent friends on the other side who have been honored with high offices, the incumbents of the highest places in the State and the nation, shrink from no such scrutiny, and are content to be judged by their acts. When a candidate presents himself for office he brings his public character into the canvass, and cannot complain of open and frank discussion of his antecedent political acts. When the press falters in the discharge of this duty, it is because it is faithless, stifled, or corrupt.

It is alleged that by such discussion the political character of Mr. Littlejohn has been damaged. He claims that Mr. Greeley owes him \$25,000, which has been lost by the plaintiff and taken by the defendant, not in cash but in value. Nor is this all. It seems that in another suit now pending, other \$25,000 is claimed for further loss of character. Nor is this all, for it is intimated that two other libels are waiting their turn for prosecution, when your verdict in this case shall have commended the prudence of the experiment.

Is it true then, gentlemen, that this little article has damaged the political character of Speaker Littlejohn \$25,000. He swears it has, and demands his money. Has he been traduced in his private character? No; the complaint characterizes the charge as relating to

his official position, and my learned friends claim that his personal reputation is unstained. What then must be the value of the political character of Mr. Littlejohn, when it bears a depreciation of \$25,000 without preventing his reelection to office, within six weeks after the publication of the alleged libel? His counsel claim that he was vindicated in his county by reelection to the Assembly, in the State by reelection to the Speakers' lip, and in the Nation by appointment to one of the highest and most lucrative places in the gift of the Federal Administration. My eloquent associate suggests, that after all he may be right in his appreciation of the pecuniary value of political character at the Capitol, but his counsel will hardly claim it. Neither they nor I have any right to assume it, and if that sum has been lost by any member of the Assembly of 1860—rely on it, gentlemen, it has been saved to the State of New-York. If Mr. Greeley has interfered with the prosperity of the lobby, and diminished the pecuniary profits of legislation, our prayer should be that the reform may not cease until every participant in those profits shall have gone out from public life as naked as when he was born. [Voice in the crowd—Amen.]

I do not believe that Mr. Littlejohn's counsel will claim that his political character, or, if they prefer the phrase, his personal character in an official capacity, has been depreciated in value \$25,000 by the charge of being a prominent advocate of the measures which Mr. Greeley and this entire community believe to have been corrupt. They will claim a verdict of six cents, and can reasonably claim no more, for they make it a part of their case that he has been vindicated from the charge, as well at home as abroad. But why seek a six cent verdict? To fasten upon Mr. Greeley the stigma of a libeler, and to make a precedent for future verdicts against journalists who venture to denounce corrupt legislation. It depends on you what the precedent shall be.

Should this action have been pushed to trial? My learned friends think it should. I am not prepared to concur with them. Perhaps I should, if Mr. Littlejohn had availed himself of the opportunity to take the stand and vindicate his character. That opportunity we tendered him by examining Mr. Greeley. He swore that he believed the matter alleged in the publication to be true. It was the right of Mr. Littlejohn to prove by his own oath that it was not true. He had the election to speak or be silent, and he elected silence. He invited investigation, and when we tendered the proof, he insisted on its exclusion. He chose not to avail himself of a noble opportunity to vindicate his honor, not by excluding our proof, but offering his own. Horace Greeley invited cross-examination on oath—the best test of truth known among men. De Witt C. Littlejohn, though he claimed his honor to have been impugned, invites no such test. It was his right to be sworn or not, at his pleasure. He could rely for the vindication of his character either on an official rule of presumption, or on his own testimony in open court. If that testimony had been given, it would have been under the eyes of this thronged assemblage, of this honored Court, of his own counsel, of the witnesses we summoned to give the evidence he excluded, and of the chieftains of the third estate. The ordeal of an oath, in open Court and in view of these witnesses, presented no attractions to Speaker Littlejohn, no terrors for Horace Greeley. If he had accepted this ordeal, my friends could have insisted with more plausibility that this suit is prosecuted, not for money, but for the vindication of his political character. When a plaintiff comes into Court in an action for a political libel, and begins his case by proving that he has not been damaged even in his political character, and follows it up by proof that before the suit was commenced he received a frank and manly letter disclaiming any intention to impute to him personal corruption—when he

excludes proof of the truth of the matters contained in the alleged libel—when he permits the defendant to swear to his full belief of their truth—when he, knowing whether they are in fact true, chooses to be silent, and when under these circumstances he demands money of the defendant, what do you believe as jurors? Does he want character or does he want money? I do not deny that Mr. Littlejohn may have sustained damage to the amount of six cents—nay, of twenty-five cents or \$25,000—but believe me, and I think you do believe me in your inmost hearts—it was not from Horace Greeley's comments, but the votes on which he commented. There they stand, and there they will remain forever. Your statute-book is polluted by unclean laws—enduring memorials of the infamy of New-York legislation in the year preceding the rebellion. Those railroad acts made irreparable by legislative compact! Those grants of more than baronial franchises in perpetual monopoly, with no duties imposed, no obligations assumed! When the years roll round, and the generations melt away that intervene between us and the twentieth century, and the demand of millions shall still be made for railroads on the principal avenues of New-York, the answer will still be: "The right to build those roads was sold—nay, not sold but given—by the Legislature of 1860, to parties known and unknown, for the benefit of political gamblers, and no road can be built until you buy out the last assign of the last descendant of the last gambler, and the millionaire proprietors of rival roads, who purchased the rights of stragglers grantees to protect in perpetuity their own monopolies against the demands of industry and commerce. And so on from generation to generation so long as any of these grantees, their descendants, or assigns can connect themselves with these infamous laws through the title made for them by the votes of Speaker Littlejohn and his conferees in the Legislature of 1860."

We are relieved, gentlemen, by an interlocutory decision of the Court from considering one question of law we had intended to discuss—whether the publication in question *admitted* the construction placed upon it by the learned Judge for the purpose of ruling upon the evidence. But, though then presented only incidentally, we do not feel at liberty to trespass upon his indulgence by opening the question for the purpose of discussion here. A publication admitting of two constructions, one innocent and one libelous, is deemed libelous for all interlocutory purposes, until the true construction is submitted to the Jury, to be determined by them as a question of fact. In other words, if the language admits of a construction which would render it libelous, it is the right of the plaintiff to have the language construed by the Court in the offensive sense, to enable him to take the verdict of the Jury on the question whether it was so intended or understood. If the words admit only of one obvious meaning, and that plainly libelous, the question of construction in a civil action belongs exclusively to the Court, and it is deemed for all purposes libelous in law, as well by the Court as the Jury.

In this case, under the ruling of the Court, I assume that the publication is susceptible of a construction which would render it libelous if so intended and understood. It is obvious, upon the face of the publication, and will be conceded by my learned friends, as by every one who reads it, that it *admits* a construction which renders it innocent. We think it *demand*s that construction, but defer, of course, to the ruling of the Court, and are content to argue the question on the assumption that it admits of either construction. It will be gratifying to the Court to instruct you, that under these circumstances the law confides that question to you. It is a pure question of fact, and it is for you to determine in which of these two senses the publication was intended and understood. The prerogatives of the Court and the Jury in

these cases are clearly defined. Neither will encroach upon the prerogative of the other.

I submit that the publication is not a libel—that it does not impute corruption to Mr. Littlejohn. Let me not be misunderstood. Mr. Greeley believed the plaintiff to be guilty of corruption. We know that, not from this article, for the article forbears to speak upon that subject—but from the sworn answer, and Mr. Greeley's oath upon the witness-stand. The complaint imputed to the defendant the charge that Littlejohn was corrupt. This called for an answer upon that point. He had not before expressed his opinion on that point, but he had as little hesitation in expressing it when the occasion demanded, as in offering to sustain it by evidence, and verifying his belief on the trial by his oath. But the inquiry is as to the intent, not of the answer, but of the original article. It is to be understood by us as it was then understood by the public in the light of the surrounding facts. It is matter of public history that the Legislature of 1860 went home justly or unjustly laden with a heavy burden of infamy. It is matter also of public history that only *six* of the members of this Assembly who supported these corrupt measures, whether from pure or impure motives, were permitted again to set foot in the Capitol. Now, Horace Greeley is called upon for his opinion as to the reelection of two of the parties who voted for those measures—both his political associates. It was his right—it was his duty—to answer according to his convictions; and what is his answer? That legislation was corrupt; and in that legislation both these parties were prominent. What is the charge? *First*: the general fact—not that the legislators—but that the legislation was corrupt. *Second*: that, in this legislation, these two members were prominent. Was this article intended to single out the guilty agents who procured the corrupt legislation? No; it was to denounce corrupt laws, and those who were their prominent advocates. Does he claim to have peculiar knowledge, not within the view of the public? No; he is speaking of public acts and public men. He unites his voice to that of the Governor who vetoed the corrupt bills; to the voice of the people who sustained the Governor, in the Fall of 1860, by a majority of over 60,000 votes—and with the active interest of the Albany lobby enlisted for his defeat. Mr. Greeley believed with you, and you, with each man on this Jury. And what he believed, he spoke. He was not called upon for a list of parties to be proceeded against before the Grand Jury of Albany. He was called upon to know whether, now that an opportunity was presented, he was ready to rebuke an advocate of these measures, in the person of a trusted Republican leader and personal friend. If Horace Greeley had loved office as much as he loved truth, he would have been silent. If he had political aspirations of the lower order, which prefer place and pay to honor and integrity, he would have been a mad man to make this publication, whether true or false. But there was a monitor within which did not permit him to falter in the discharge of a duty his own conscience enjoined. He felt that, let the consequences be what they might, though a majority of the Legislature were his trusted political friends, though one of them was a man of marked ability, of commanding influence, trusted at home, trusted by the Legislature, elevated to a high public position—he was bound to speak what the public welfare demanded. He spoke that, and spoke no more. Now, gentlemen, is there one word in this article which imputes to Mr. Littlejohn the sale of his vote for a bribe? You are told it is susceptible of that construction. But the question is, whether it does not admit and demand a very different construction, in harmony with the intent of the writer and the understanding of the reader. Honor to the good, old, right trial by Jury. I believe it was Lord Bacon who said that the wisdom of the common mind of the mass

of men infinitely surpasses that of the wisest man. Trial by Jury, in a case like this, is a right of inestimable value. De Witt C. Littlejohn sues for damages which he claims to have sustained from words which have gone forth to the people, and it is for the people, as represented in the Jury box, to say how these words were intended, and how they are fairly to be understood. You bring to bear the judgment of the popular mind, unembarrassed by those technical rules and artificial refinements which, while they sharpen the faculty of reasoning in debate, often dim the moral vision and cloud the understanding of those who study books more than they study men. It is because the popular mind is best adapted to the construction of popular language, that the law commits questions like these to the conscience and intelligence of the Jury, holding that, for this purpose, the practical sense of twelve men will furnish a safer criterion than mere judicial or professional opinion. You have heard this article read. What is its plain and obvious intent? Do you understand it as a charge that the plaintiff received a bribe? These words are to be understood by you now, and here, as you understood them when reading the article by your own fireside, on the evening of its publication. Even without the aid of other evidence, you have no difficulty in reaching the clear conclusion that it was not intended to charge the plaintiff with selling his vote, but with advocating corrupt legislation. But, gentlemen, however it may be with the article upon its face, the plaintiff has clear, controlling, and irresistible evidence, that the intent of Mr. Greeley was not to charge him with personal corruption. Mr. Littlejohn had a right, if he chose, to stand upon the article. He had the right, if he pleased, to resort to other evidence to reflect light on the import of the language, and the intent and purpose of the writer. He chose not to trust his case upon the language of the article, but to resort to extrinsic evidence. That evidence is now the property of both. It belongs to the case. In legal effect, he stipulated when he introduced it, that it should be read side by side with the libel, that you might thus ascertain the secret heart and intent of the defendant in making the publication complained of. The plaintiff introduced for this purpose Mr. Greeley's letter of Nov. 26, 1860, and his article of *THE TRIBUNE* of 11th September—one of them two months after, and one two weeks before the publication in question. You remember the alleged bribe refers to the opinions previously expressed in *THE TRIBUNE*. The article of 11th September is the only one the plaintiff ventures to produce and submit to your scrutiny. Now, gentlemen, as Horace Greeley speaks in the article of 11th September, he speaks in the alleged libel. The plaintiff makes Mr. Greeley his witness, and the statements in that article become evidence in the cause, to which, if you believe them, you may give effect by your verdict. The party who introduces the statement of his adversary does so at the peril of its being fully believed. We both agree that this article and this letter are fair and reliable evidence of the intent and purpose of Mr. Greeley in publishing the article alleged to be libelous. Let us then consider their effect. On the day the article complained of was published, as the proof discloses, the relations of Mr. Greeley with Mr. Littlejohn were precisely the same that they were at the time of the publication of the article of 11th September. On the one day as on the other, they looked back on an uninterrupted personal and political friendship of twenty years' duration. On the one day as on the other, each remembered with pleasure the devotion of the other to the political principles of which both were advocates. On one day as on the other, each recurred, but with very different views, to the Legislature of 1860. Mr. Greeley looked back to it in the same spirit in which you do now, and thanked God that he had opposed it from the beginning. Mr. Littlejohn looked back to it in another spirit, and I have no right to say

he thanked God that he had supported it to the end. Remembering, then, that the relations of the two parties were precisely the same at the dates of the two articles; that they were written in the like spirit, and with the same purpose and intent, let us recur to the article of Sept. 11, which is made evidence by the plaintiff to ascertain what was in the mind of Mr. Greeley, and whether he meant to charge Mr. Littlejohn with selling his own vote, or simply meant to charge that the legislation was unpatriotic and corrupt; that it was designed to advance other interests than the public good; that those who advocated it were either deceived or deceivers; and that so believing, he was inflexibly opposed to their re-election.

LEGISLATIVE CORRUPTION.—Certain local journals persist in misrepresentations of the course of *THE TRIBUNE* respecting State matters so gross that we cannot refrain from noticing them. We take the following from a leader in the last *Chautauqua Democrat* as a sample:

"There may have been, and doubtless was, the usual amount of 'Legislative corruption' at Albany last Winter."

"The usual amount of Legislative corruption at Albany?" Time-honored usages of our ancestors! What has become of them? There was a period in our history when high offices were filled by upright men. Those whose lives touched the era of the Revolution, retained the spirit of patriotism its fires had kindled and loathed crime and corruption and venality. But here a prominent public journal enters the lists against *THE TRIBUNE* and intimates that there is a usage of corruption which Republicans are bound to respect! It is because corruption is acquiring the sanction of usage, gentlemen, that this case, involving the issue of corrupt legislation, transcends in interest and importance any previous libel suit in this country. The corruptionists appealed to the people against Gov. Morgan, and were defeated by an overwhelming majority. They appealed to the representatives of the people at the Chicago Convention, and their support so weakened the hands of his other supporters, that the foremost statesman of the Republican party fell in the house of his friends a victim of corruption in which no share was imputed to him. Let us proceed:

"But that there was that which should justify the wholesale and indiscriminate denunciations of that Legislature, with which the columns of *THE TRIBUNE* have teemed for many months, we have no evidence of, and do not believe."

"In our country, Mr. W. L. Sessions was the special object of *THE TRIBUNE*'s denunciation, and why? Simply because he was a leading and prominent member of the Senate. Although the shafts of *THE TRIBUNE* have assumed a more personal aspect towards Mr. Sessions, they have been aimed indiscriminately at Mr. Smith and every other member of the Legislature. There have been no exceptions in this wholesale abuse of the last Legislature. If *THE TRIBUNE* was honest, why does it not particularize and discriminate? There were scores of Republicans who voted against all those measures denounced as venal and corrupt, and yet they are all included in the anathemas of *THE TRIBUNE*."

Never, gentlemen. If such an article could have been found it would have been produced. Mr. Greeley did not denounce the entire Legislature. He made the same discrimination which the people made. With six memorable exceptions, the people said that of all the members of the Assembly who voted for these measures no man, whatever his private worth or public capacity, should return to the Capitol. Mr. Greeley's condemnation was of those who voted for these measures, not of those who voted against them. Let Mr. Greeley speak for himself:

"Every careful reader of *THE TRIBUNE* knows how unjust, how essentially false, are the material portions of the above. Time and again have we urged that very discrimination which *The Democrat* accuses us of ignoring—time and again have we explained that no Legislature ever contained more upright and worthy members than our last. MESSRS. BELL, MURPHY, MANIERKE, and others in the Senate—MESSRS. LUCIUS ROBINSON, CONKLING, FLAGLER, &c., in the House—forming about half the Republicans in either branch—were as honest and faithful legislators as our State ever had; and this we have repeatedly asserted and proved by their acts. There was a very different lot of Republicans, however, forming nearly half of those elected, who conspired with seven-eighths to nine-tenths of the Democrats to

pass among of the most corrupt and unjustifiable acts that ever were put through a Legislature, as our columns have likewise repeatedly shown. That Mr. Sessions's name appears habitually in the latter category, we deeply regret; but the fault is entirely his own. There may have been fools in that Legislature who voted wrongly because they knew no better; but he is not one of these.

"As we are challenged for specifications, with the cool assertion that there was 'the usual amount of Legislative corruption at Albany last Winter,' we will merely premise that, if that was but 'the usual amount,' it is high time that it should be rendered *unusual*, and this, by the blessing of God and with the help of the People, we mean to secure. To this end, let us once more proceed to discriminations and specifications.

"We fear it is true that some 'Legislative corruption' is 'usual' at Albany and at other capitals; but has it ever before proceeded to such extent that a Governor has felt constrained to veto in succession half a dozen of the principal measures of a Legislature wherein his political friends had a majority? We can recollect but two instances of this—one in Pennsylvania, when Gov. Snyder was compelled to resort to the extremity of dissolving the Legislature, to prevent the corrupt passage of a lot of Bank charters; and one in our own State, wherein Gov. Tompkins had to do substantially the same. In either case, public sentiment almost unanimously condemned the Legislative majority and sustained the Governor—as we are sure it does now. So much for what is 'usual' in this line."

Here, gentlemen, you have two branches of the Republican party—that of which Mr. Greeley is the acknowledged national exponent, and the other, some of whose leaders have honored us with their presence. Some of you, I doubt not, noticed the benign and beaming smile which illumined the commanding features of one of these chieftains when the ruling was announced which secured immunity to the Lobby, so far at least as the present trial is concerned. It in no degree impairs the force of the decision as the law of this case, and yet I fear the rulings may have been misunderstood, and that even the lobby may find that there is little occasion for congratulation in the decisions made on this trial, when their limits and application are more specifically defined. You perceive, gentlemen, from the extract embodied in this article that a Republican journal adverse to Mr. Greeley does not deny the corruption of the bills in question, and does not claim that the votes in their favor can be defended. But he begs Mr. Greeley to discriminate. All our friends did not vote for these measures—do justice!—do justice by publishing the names of the Republicans who voted manfully to defeat them.

And in this opinion our learned friends seem to concur. Bear in mind the admission which yesterday fell like a knell from the lips of one of the learned counsel—"We will admit that these bills were all corrupt, if you choose;" and that admission we accepted, without waiving the offered proof.

"When all men agree that these laws were corrupt, when the plaintiff admits that he was their advocate, was it not time for a Republican to hold those responsible who voted for their enactment? [Mr. Porter then read the residue of the article of Sept. 11, as contained in the evidence, and proceeded in his comments.] You perceive, gentlemen, that Mr. Greeley throughout deals only with political action and political responsibility. He divides those who sustained these corrupt measures into two classes, the deceivers and the deceived, and considers them in either case unsafe custodians of public rights. He was opposed alike to the re-election of those who, having eyes, could not see or would not, and those who looked corruption straight in the face, and struck hands with it. Was he not right? Is not that your theory? It is the theory on which Gov. Morgan went down to the people at the Fall election, and obtained that noble and triumphant verdict, a worthy tribute to an able, fearless and upright man. "It is worthy of note that Mr. Greeley, on public grounds, condemns all alike who voted for these measures. If it is a libel on Mr. Littlejohn, it is equally a libel on each of the eighty-three members who supported the corrupt bills." Of all these gentlemen he alone claims to have been traduced. In view of the facts to which I have referred,

how should he commend it to your favorable consideration. My friends will do it much better, but if I were compelled to present it, could I do it better than in some such form as this: "I voted for these Railroad bills, which seem to be conceded by all men to be corrupt; I voted for the grant of millions to political paupers and scheming millionaires. I voted to prohibit railroads forever in the chief avenues of New-York, unless by the consent of named and nameless grantees, and this under color of a grant of further railroads in New-York. I now demand your verdict declaring that I was not corrupt. I voted for the West Washington Market bill. I voted to sacrifice property of the State of immense value, by an unusual measure, which tended to put public rights in jeopardy, and advance private interests by interfering with the ordinary administration of the courts of justice. These measures I voted for understandingly. I had notice from the Governor of their flagrant character. I left the Speaker's chair to advocate them on the floor of the House. Through my prominent support of those bills, they are now recorded in your statute-books. The measures were corrupt, but I am innocent. I took no bribe. I made no gain. Horace Greeley said I was prominent in this legislation. He is a wanton libeler. I demand your verdict."

I hope my friends will be able to present his case more favorably; but I have given its leading features as they impressed my mind during the progress of the trial. I need scarcely recur to the prominent characteristics of the Gridiron bills, so admirably analyzed in the masterly opening argument of my associate. You remember that they were grants in perpetuity, obviously framed to evade the Constitution, and without the usual reservation of the power to alter and repeal. You remember they were grants of franchises invaluable for use, invaluable for disuse, made marketable alike to those who would build roads and those who would prohibit their construction for the purpose of excluding rivalry and perpetuating monopolies already overgrown. They were grants not to corporations subject to general laws, but to men whose names are unknown as benefactors of their country, who are scarred with no wounds, unless they be wounds received at the primary meetings of hostile parties—men who have not augmented your revenues by public works, illustrated your history by their genius, or enhanced your glory among the nations. No, they are grants to lawyers of whom you never heard; to brewers whose names are new to your ear; to hackneyed politicians whose reputations are too familiar to commend them to your regard. To such men, of whom we are at liberty to say nothing except as you happen to know of them, or as you yourselves are ignorant of them, were these grants made by Speaker Littlejohn and his associates. And here too we have another attempt to intermeddle with the administration of justice, and to carve out for the George Laws or others who may have control of these roads, a convenient judicial district, within which alone all causes are to be tried in which the proprietors of the roads may be concerned, and for what reasons it is not difficult to conjecture. Was this scheme fraudulent upon its face as disclosed in the statute book? Does it reek with shameless, open, undissembled fraud? So Horace Greeley thought, and in this respect I do not understand the learned counsel for the defendant to differ from him.

Mr. FOSTER—The counsel said no such thing. I think it is time to interrupt this course of argument.

Mr. PORTER—Mr. Sedgwick stated in his argument yesterday, to which Mr. Williams replied, that they would admit that all these bills were corrupt if we chose.

Mr. FOSTER—No, Sir, he said no such thing.

Mr. SEDGWICK—We do not mean to say so.

Mr. PORTER—When the counsel make an admission

becomes the property of the cause. It belongs to both parties. I cannot concede the right of counsel to withdraw an admission made in presence of the Jury, even on the ground that he did not mean to make it.

Mr. SEDGWICK—I did not say I did not mean to say it. I say expressly I did not say any such thing.

Mr. WILLIAMS—We certainly so understood it distinctly.

Mr. PORTER—I have no doubt my eloquent friend thinks he did not make the admission; we often, in the earnestness of discussion, say what we do not remember afterward, our minds being engrossed by the main question involved in the discussion, and it not unfrequently happens that we say more than at the time we intend. I heard what my friend said, and called the attention of my associate to it at the time. I felt the importance of the admission, and took occasion to allude to it in my own subsequent argument to the Court, and there was at that time no disclaimer. We have acted upon it on the trial, and I cannot consent that it be withdrawn from the Jury. But neither the counsel nor myself can be under embarrassment on that subject; for his client has chosen to make evidence of the statement of Mr. Greeley in *THE TRIBUNE* of Sept. 11; and the corrupt character of those measures is thus established by the concurrent assent of both parties. These were the measures advocated by Speaker Littlejohn with notice from Gov. Morgan of their "flagrant" character. I am not called, as the evidence now stands, to argue the question as to his motive. It is sufficient for my purpose that Mr. Greeley, in the alleged libel, did not charge him with corruption. In the previous article he conceded that all were not corrupted. He claimed that some were bought, but he made no such claim as to Speaker Littlejohn. Some he insisted were bought and paid for. They made sale of their souls. They thought they were only selling their votes. Some voted for the bills not knowing what they did, but he was opposed to the re-election of all, not excepting Speaker Littlejohn. But we are furnished by the plaintiff with other evidence, which he could introduce, though we could not, and which utterly excludes the only construction that can render the publication libelous. The plaintiff introduces Mr. Greeley's statement in his letter of 26th November. If you believe it, the plaintiff is bound by it. In that letter which you have heard twice read already, Mr. Greeley disclaims any intention in any previous publication to impute personal corruption to Speaker Littlejohn. Both sides agree that in the light of this evidence you are to read the alleged libel—that they are all written in the same spirit—that in each you find the heart and purpose of Horace Greeley. What then was the intent and import of the article? I know those measures were corrupt. I do not know that Speaker Littlejohn was corrupt. I do not know that he was bribed. I do know that he was their prominent advocate, and knowing that I cannot advise his re-election—certainly not by Republican votes. If this is the fair import and intent of the article, it was a fair and just criticism upon his public acts. It was made in good faith, from a sense of public duty and not of malice. If you so read this article, it will be your right and your duty to find a verdict for the defendant. I assume that the Court will so instruct you. As I do not know what may be your conclusion on this subject, I will advert briefly to such other questions as you may find it necessary to consider.

In this case we have proved affirmatively the absence of all malice. That this is matter of defense to the claim for damages beyond the amount of proved and actual injury will probably be conceded. But I am bound to submit to the Court another view of this subject, which has been considered and elaborated on

authority by my learned associate. It is that where malice, is affirmatively disproved, the gravamen of the action is gone, and there is no civil remedy in such a case, even for actual damages. I do not aver it to be the law, but I submit the question for decision. The earliest and latest authorities agree in the proposition that malice is the gist of the action, and without actual malice established either by proof or presumption, there can be no recovery. The authorities further establish the proposition that the presumption of malice from the falsehood of the publication may be repelled by proof. The principles involved in the consideration of this question are discussed in a luminous opinion of Mr. Justice Selden in a case to which I will give your honor a reference. The commonly-received opinion has been that the presumption of malice can only be repelled by proof that the communication was privileged. It may, perhaps, well be considered whether this restriction has not rested on the practical difficulty in other cases of rebutting the presumption of malice. Until the recent changes in our law of evidence, the party who could alone effectually repel the inference of malice, and until the recent decision by the Court of Appeals, no witness was permitted to testify to his own secret intent. These changes may well have thrown open the question whether the rule of civil protection may not extend to all cases where malice is expressly disproved, and the publication is made on probable cause, in good faith, and from commendable motives. This is not the appropriate occasion for an extended discussion, and we are content to take your Honor's ruling, giving a note of a few authorities of which such as are accessible here will be handed up to the Court. (16, New-York Reports 372; 15, New-York R. 120; 1, Wendell's Starke 266; 4, Barnw. and Cress 247). Had Mr. Greeley reason, from the public acts of the plaintiff, to believe that the matter alleged to be libelous was true in whatever sense it may be construed? If the acts of Speaker Littlejohn misled the defendant and the public into even an erroneous belief that he acted from improper motives, he cannot complain of the consequences of his own wrong, as if it were the wrong of another.

I have referred to these legislative acts, and read them in the course of my argument not as evidence, but as laws; which the Court, the parties, the Jury, and the counsel are bound to know. They are our only authentic history. They are presumed to be read and known by all men. If you violate them, though you never saw them, you incur the penalties they impose. If your own rights are invaded, though you never heard of their existence, they secure to you protection and redress. Mr. Littlejohn is proved to have voted for them and advocated them. If you believe, upon the face of these laws, that they were corrupt; that Littlejohn supported them not with an eye to the public good, but from other and private motives, I care not what they were, you will have no difficulty in characterizing his act. I said your farms were mortgaged for the benefit of public plunderers. Suppose the Legislature of 1860 by a shorter cut, and they loved short cuts, had chosen to enact that the people of the State of New-York should give to George Law and Isaiah Rynders—each representative men, but of widely variant classes—\$5,000,000, and that the tax-gatherer should call on the farmers of New-York to relieve their farms of the incumbrances created by the act for the benefit of these two public benefactors—if De Witt C. Littlejohn had voted for that bill would not all the nation have cried shame? There is legislation of a character so gross that no room is left to doubt the intent of its advocates. I put the case by way of illustrating with precision the rule of presumption on questions of motives and intent. There are acts so flagrant on their face; so directly at war with the public good; so inconsistent with honest intent, that we may presume, in the absence of

other proof, the presence of unworthy motives. In the case supposed, you need not ask whether an intelligent man who voted for the bill was honest or corrupt. If you knew he was not bribed, you would feel that he had not even the excuse of interest to cover a bold, naked act of flagrant corruption. If in such a case he was bribed in fact, you would expect no witness, and need none beyond the act. The bill and the vote would point to the guilty motive as unmistakably as the bloody dagger in the vision of Macbeth to the bloody hand. Whether the plaintiff was corrupt or not, the fact is undisputed that Mr. Greeley so believed. If he did not believe that legislation was corrupt, was there another man in all this State who did not believe it? Turn it over in your minds. Have you ever in partisan discussion, in your interviews with political friends or political foes, met one man so shameless as to avow he did not believe it? As you believed, Horace Greeley believed. I appeal to the bold, manly utterance of his belief, in the article of the 11th of September, in which he states the grounds of his belief at the peril of eighty-three libel suits. If the article now in question is a libel, then eighty-three times \$25,000 is the sum of the debts he owes, contracted in two columns of THE TRIBUNE in a single day.

I appeal to that noble letter, in reply to the menace of a libel-suit, in which he frankly avows to Mr. Littlejohn, that he entertains the opinion which he cannot change; that these measures were corrupt, and equally frankly disclaims any intention in his previous articles to impute to him personal corruption. I appeal to the oath of Horace Greeley—an oath upon which an honest man can rest as upon a rock. He spoke, gentlemen, what the archives of the State will speak forever! He spoke what Gov. Morgan, in his veto message proclaimed to history—what every man in this State of ordinary intelligence believes—what you believe in your consciences and upon your oaths—and what the damning records of these public acts will forever prove. Did Horace Greeley believe the matter alleged in this article? Do you see and know, and did he see and know, that Mr. Littlejohn was either a culpable agent or a deluded instrument? Do you feel this the only legitimate inference from the act unexplained? Has he availed himself of the opportunity to present himself on the stand and explain the act and the motive? Do you believe the testimony of Mr. Conklin, that this plaintiff, whether deceived or deceiver, was prominent in the advocacy of those corrupt measures? In either case he was not entitled to re-election, and that is what these articles declare, and what I trust, for the honor of the State, for the honor of Oswego, this Jury will declare! What motive had Mr. Greeley for making the publication, if he did not believe it? These men were his political friends and associates. Why make enemies of eighty-three public men, all occupying prominent positions—all indorsed by their respective constituents as men of influence and honor? He loved the party of which he was a chieftain; but he was true to his convictions, and on a question of public right and public duty, spared neither friend nor foe. He proved his faith by his works. What he believed he uttered. He believes it now. You believe it now; and Mr. Littlejohn has not chosen to shake either your belief or his by his oath. If that belief was wrong, had Mr. not Littlejohn by his public acts given Mr. Greeley, and the people of this State, reason to believe that he was a prominent advocate of corrupt legislation? If we have been misled, has it not been by his own acts? not done secretly and in a corner, but in the broad blaze of noon and under the high canopy of heaven; done in the view of the people at their Capital. Mr. Littlejohn must abide by the rule by which we must all abide. The tree is known by its fruits. Where the act is of such a character as to lead the mind involuntarily to the conclusion that it proceeded from bad motives or strange delusion, it demands explanation, and until explained

the mind rests on its first conclusion. Mr. Littlejohn sought publicity and he found it! Washington at the close of a long and honored life, sought retirement and found it. They were going in opposite directions. Littlejohn was bound upward, and like every man that climbs, he must take the peril of the climber. He who rises above the mass of men must expect observation and scrutiny. He who invites judgment, must abide judgment; he who enters the walks of public life with a character that shrinks from scrutiny, and cannot be trusted to live down political criticism on public acts, has mistaken his vocation. I neither claim nor concede that a candidate for office may be wantonly traduced, but when his public acts are criticized fairly, without malice, in good faith, with probable cause, I claim that he is entitled to no special favor from jurors or from courts, when he brings his character to the forum, for the purpose of converting it into money. Like the author who invites publicity by issuing a new volume to the world, he invites honest censure, when he demands undue commendation. Above all, should the plaintiff in such a suit be sure that his own act has not misled the man he prosecutes. Take, for instance, the West Washington market bill—one of those bills almost unheard of in the annals of corruption, to withdraw lawsuits, by legislation, from the tribunals of public justice. It speaks its purpose on its face. It bears the brand of the Governor's veto. It shocked the moral sense of the community. It is stamped by the public judgment as a bald attempt to cover up by legislative fraud a fraud committed in the courts, and without a judicial hearing to dispose by a quasi commission of the rights of three quarters of a million of men, women, and children! Your public documents disclose its character, the Governor's veto exhibits it in all its flagrancy, all parties agree that it was corrupt! When men excuse themselves for their votes by the plea of blindness and ignorance, does it not require some boldness to select as the foundation of a libel-suit the strictures of a journalist upon a law which the plaintiff's counsel have so strenuously sought to exclude from your consideration? They challenged us to prove the truth of the publication. We accepted the invitation, and tendered the proof. On their objection it was excluded. They seek to ignore the West Washington Market bill. I would counsel them to do so. But you cannot ignore it. The facts are in, in part at least. When they proved Mr. Greeley's article of 11th Sept., and his subsequent letter, they proved too much. In support of this bill the plaintiff surrendered the Speaker's mace, and took the floor as champion against the veto. Why shrink from the disclosures apprehended from our witnesses? You saw Taylor here—no willing witness—brought here as a prisoner for violating the mandate of the Court requiring his attendance as a witness.

Gentlemen: What manner of laws are these from the investigation of which, in open day, their advocates recoil? What manner of laws are those which the learned counsel is unwilling to have read in your hearing, and will not submit to your judgment? And why, in a search after truth, do they choose darkness rather than light, and seek shelter constantly beneath the long robes of the law? Enough appears in this case to show that more ought to appear before the plaintiff can entitle himself to your verdict. As with the Market bill, so with the Gridiron bills. Take one as an illustration: Speaker Littlejohn and his associates gave the franchise of a railroad that girdled the metropolis of the New World, inclosing a population of three-quarters of a million, the heart, the life, and the wealth of the nation, as a free gift to men unknown as public benefactors—gave it, as your State archives show, when responsible parties were willing to pay half a million for the grant; rejected security when it was offered, and gave it without security—gave it when you were paying a tax of four millions to save the State from repudiation—nay, gave millions more—

gave it in perpetuity, to day, to-morrow, and forever—gave it with notice from the Governor of its corruption—gave it to be gambled for at the fairs of New-York. They marked the lines of other gifts of millions along the great avenues of industry and commerce, in a city containing one-fifth of the population of the State. These men did not sell, but alienated, without money and without price, royal franchises, parcel of your State sovereignty. The bills came into the Assembly Chamber. Speaker Littlejohn was their champion, and Gov. Morgan the champion of the public. The Governor was strong in the People's confidence. The Speaker was stronger in the People's capital, where the air was dark with unclean birds. He triumphed. Was it the triumph of legislative purity or legislative corruption? The learned counsel claims that he was not paid for his voice and his vote, and he wants his pay now from Horace Greeley. How much?

Gentlemen, I am detaining you too long. On themes like these I could weary you to the going down of the sun. But I am content to pause here and commit the rights of my client to your keeping—for it is to you, and not to the Court, that the law commits them on the great issue in this case. If you fail to dispose of it on the question of libel or no libel, the legislation is before you, naked, shameless, corrupt. The prominent advocate of that legislation is before you, calmly asking your approval and commendation. You are to inquire: 1. Did Mr. Greeley impute to the plaintiff personal bribery and corruption? 2. Has he been damaged by the supposed charge in his political character? 3. Was the publication made without malice, in good faith, and from a high sense of public duty? 4. Did Mr. Greeley firmly believe the facts stated in the publication? and had Littlejohn by his public acts given him good reason to believe them to be true?

If the publication was true, silence on the part of Mr. Greeley would have been criminal. If Littlejohn had given him good reason to believe it to be true, silence on his part, though it might have been politic, would still have been criminal. He was not silent. He spoke—as you spoke—as the Governor spoke—as the people spoke, and as I trust you will speak by your verdict! If, as I hope, that verdict shall be for the defendant, it will be one to which every honest man in the State will promptly and cordially respond AMEN!

MR. FOSTER'S CLOSING ARGUMENT FOR THE PLAINTIFF.

IF THE COURT PLEASE—THIS, gentlemen of the Jury, is an action of very great importance, as the counsel on the other side has already told you. It is to determine, in my judgment, whether private character is worth preserving, and whether it is entitled to any protection in courts of law, against unjust assaults, or whether the public press shall run riot in its abuse of individuals, whether in public or in private station. It is in every aspect, very grave in its considerations; it appeals to us all, as men, as fathers, as brothers, and as citizens—it appeals to us all, as it affects all the relations in life. Some men, gentlemen, esteem property as above almost everything else; but I care but little for that man who does not regard his character as paramount to every earthly interest which he has, or who does not care for the character of his family as far above every other earthly interest. And the man who will sit down silently, and uncomplainingly, and quiescent, under a charge against his public or private honesty and character, is unworthy a place among the sons of men. I mean to be as brief, gentlemen, as the

circumstances and the facts of this case will allow. I do not desire to make any appeals to your passions, or to your prejudices; I shall attempt to address myself to your sober reason and your judgment, and if I fail there, I desire not to make a lodgment anywhere else. I shall not expect, in connection with what has already been consumed in the opening on our side, to occupy almost seven hours of your time in the arguments of counsel. I desire, gentlemen, to place no clap-net before you; I desire only—and if I can do so, I shall consider my duty performed—to place before you the facts and the circumstances which call for your consideration in this case, and which, in my judgment, will lead you to a correct result.

We have had in this case, on the part of the defense, a most strange and unaccountable opening. It occupied three and a half hours of the time of this Court and of this Jury. It was strange in its every aspect. It was talented and able; but it seemed to have no regard whatever to the circumstances and the facts of this case. It traveled all over creation—it assumed as facts what they have never attempted to prove; it was rambling and discursive, and in my judgment, utterly unfitted to be presented in a place like this. We are here, ministering at the altar of the law; we have each and every one of us taken upon ourselves the obligations that belong to our places; and in my judgment it is just as much the duty of counsel to confine themselves to matters which are strictly and legally in the case, as it is for the Judge, correctly, and to the best of his understanding and ability, to charge the law applicable to the case; or for the Jury upon their oaths to find what they deem to be the facts in the case. This is no place for the use of outside influences; they are unbecoming and misplaced, and in my judgment it is paying a very poor compliment to the intelligence and perception of the Jury, to try to palm off upon them such things in preference to the facts which actually belong to the case. In my opinion, gentlemen, that opening was made because the counsel on the other side did not expect to be allowed to give such proof as they had at command, and the elaborate and able argument of the counsel who has just preceded me was founded with the utmost ingenuity and ability—not upon the evidence in this case, but it is based upon that strange opening with which you were entertained, at the opening of this case for the defense. I will barely remark that I presume you will try this case upon the evidence—that I believe is the nature of your oath; and not upon the opening of counsel, or upon the argument of counsel, based upon that opening, and framed upon it altogether. You are to try the cause upon the facts in the case, and upon the constructions of law which the Court shall announce to you from the Bench.

Why, gentlemen, strange things have taken place upon this trial. The Court upon solemn argument, and after the counsel who opened the case had expended three or four arguments—the Court deliberately decided two propositions. *First*: That this article in THE N. Y. TRIBUNE of the 26th of September, the one upon which the suit is brought, was *per se* libelous; that it imported to charge the plaintiff with personal corruption; and the Court as deliberately decided another question—in the *second* place, that the article was not a privileged one, and must be sustained by a proper justification, or if not sustained, the punishment to be inflicted upon the libeler is to be mitigated by such mitigating circumstances as are set forth in the 1st and 5th answers. Yet, strange as it may seem, an appeal was directly taken by the counsel who summed up this case, and again this question was solemnly argued and adjudicated upon, and the prior decision of the Court sustained! And yet again, in the face of all this, it has been urged upon you, in the closing argument of the counsel, hour after hour, that this article

is not libelous in its character, and that this is one of the questions now open for you to decide! As I have already said, you have your appropriate duty to perform, I have mine, and the Court has his; and it is upon the faithful performance, by each of us, of the duties respectively belonging to us that justice can be obtained, and proper results arrived at. The great beauty and harmony of our system of jurisprudence is, that it leaves questions of law to the Court, who has made that science the study of his life, and who is responsible for the faithful performance of that duty. But even if the Court makes a mistake and a party is injured in consequence, he has his remedy by an appeal to a higher Court to have the case again adjudicated upon; and if need be it can be carried to the Court of Appeals, the Court of last resort. And under this system the Jury has as its proper province to weigh the credibility of witnesses and to determine, upon what they say, what are the true facts in the case, and then to apply these facts under the rules of law which the Court lays down. Thus there is no difficulty in arriving at a correct result, and if any mistakes are committed they can be corrected thereafter. But suppose that, in defiance of the charge of the Court to the Jury, the Jury should say that they are better lawyers than his Honor, and should override his rulings, and find a verdict inconsistent with the facts and with the Judge's theory of the law! There could be no redress obtained, because there would be a proper ruling of the question to the Jury, of which we could take no advantage on either side. Hence you see, gentlemen, the strong necessity that each department of the Court should perform its own functions alone, and leave the other departments to be performed by them severally in accordance with their duty. I do not make these remarks because I fear that you will assume the province of the Court at all, but on account of the strange arguments which have been addressed to you, telling you that, in effect, you are the judges of the law as you are of the facts. That is a gross mistake. The counsel have not told you so in plain words—they would not like to do that—but they have done so in substance, by telling you that it is your duty to find what is the character of this paper of the 26th of September, notwithstanding the Court has decided that it is libelous *per se*—that is, showing that it is upon its face libelous, and charges the plaintiff with corruption.

Now, gentlemen, the words of publication in THE TRIBUNE are as follows:

"A correspondent earnestly inquires our opinion concerning the nomination for members of the Legislature of D. C. Littlejohn, at Oswego, and Austin Myers, at Syracuse. On this subject our opinion has been so often expressed that it cannot be in doubt. Both these persons were prominent in the corrupt legislation of last Winter."

"Prominent in the corrupt legislation!" Prominent in forwarding legislation which was corrupt? No; by no means. But "*Prominent in the corrupt legislation*," showing inevitably that the writer of the article intended it to imply that they were foremost of the corrupt ones in the corrupt legislation alluded to.

"Accordingly, both of them ought now to be defeated"

Why should they be defeated, if their motives were honest, although others who were acting in that legislation were corrupt? If Mr. Littlejohn were a man of the abilities which they concede to him, because he happened to vote on the same side with men who happened to be corrupt, on the passage of a bill, does that prevent him from being a legislator?

"Or, if they must be sent back to pursue their career at Albany,"—

Now, what is the meaning of that word "*career*"? Was it an honest career? Was it a mistaken career? Or was it a corrupt career? To which of these terms does the word "*career*" inevitably apply? What is its meaning if it does not apply to this corrupt career? These same bills are not to be repeated at the next ses-

sion; but the implication is, that they are not to be sent back to continue this career of corruption, which attended the legislation of 1860.

"It should not be the work of Republican voters."

Now gentlemen, it is of little consequence to us here to which political party the plaintiff or the defendant belonged. We do not sit here as politicians, we sit here to investigate the facts of this case, and to determine upon them according as the evidence shall show. We do not sit here to favor one set of men or another; one class of parties or another. But even if we did, this legislation of 1860, be it what it may, and the legislation with regard to these particular acts which have been specified in the answer set up in this case, was participated in by both sides, and by members of both political parties; and a large majority of each political party supported these measures. There are no reasons, therefore, why any man through prejudice to those of an opposite party, should swerve one iota from the proper discharge of his duty here. If the Republicans of that Legislature are corrupt because they passed these acts, then the Democrats of that Legislature are also corrupt, because they united with them, and the votes show that a majority of both political parties participated in the votes in favor of these bills.

I shall speak no more upon the question whether this article is libelous or not; I shall leave the Court to protect itself, if any protection is necessary, against the appeal from its decision to you. I have no doubt but that as his Honor shall charge you in this respect, so you will find. It is the province of the Court to decide whether upon its face this article is libelous or not, and it is the province of the Court to decide whether upon the face of this whole article it is a privileged one; taking into account the fact that the defendant is the editor and publisher of a paper; and upon these two points the Court has solemnly decided, and I trust that from that decision there is no appeal until after this trial is closed; and then if the counsel think that wrong has been done, they can appeal to a higher tribunal and correct the mistake, if any has been committed. I shall assume, therefore, for the purposes of this case, that this article is libelous; and my next proposition is, that being libelous, and not proved to be true, the law infers malice, and that inference is not to be refuted by the testimony of Mr. Greeley himself, merely giving what his opinions and his views were of the motives which actuated its publication. We have had this strange doctrine promulgated here, that by reading other articles from THE TRIBUNE in this case, we have taken them as our testimony, and taken them to be true. Why, gentlemen, if this were not in a court of justice, and if this was not a grave question between two citizens of standing and character, this would be farcical to the utmost extent. Upon the same theory, the reading of the article itself on our part would be taken as evidence of its truth. These other articles were admissible only for one single purpose: for the purpose of showing the intent with which the defendant made these charges. They are given in evidence to characterize that intent, and to show if he was actuated by express malice or not. They are given in evidence, legally given in evidence, with the approbation of the Court, for the purpose of showing that these personal attacks and charges were continued by the defendant. He did not rest upon one article, the article in question here; but he preceded it by one of the 11th of September, in which he made a charge as outrageous, against all who voted for these bills, as he made against this plaintiff; although in this article it is not equally made by name, except to place the name in the list of those who voted for certain bills. He commenced them before Mr. Littlejohn was nominated; but he commenced them doubtless when he expected that he would be nominated. This first article was promulgated in THE TRIBUNE on the 11th of September, 1860; and on the 19th of the same month the cor-

stintments of Mr. Littlejohn re-nominated him unanimously to represent them in the Assembly. Did he stop there? On the 8th of October, or before that time, he received a letter from Mr. Littlejohn, not asking that it should be published, but a letter denying in the most solemn manner any participation in any corrupt legislation of any description, and calling upon him, as one man has a right to call upon another whom he thinks has done him an injustice, to review his course and see whether it does not become him to make some reparation in the way of recantation or explanation. But to his utter surprise, he finds that letter in *THE TRIBUNE* a few days afterward, accompanied with comments, over the signature, the initials of Horace Greeley, "H. G.," which were more offensive than the other libel.

Mr. WILLIAMS—That paper has not been put in evidence at all.

Mr. SEDGEWICK—We proved by Mr. Greeley that he published such an article.

Mr. FOSTER—This is on a question of malice, and we prove by him that he published that letter; that he published it with comments over his own initials, taking two occasions to follow up Mr. Littlejohn, who had in a friendly manner written him a letter not intended for publication.

Mr. WILLIAMS insisted that the letter was not in evidence.

Mr. FOSTER—Nobody claims that the contents are in evidence; we claim that he admitted the receipt of such a letter, and published it in *THE TRIBUNE*. If those comments were just and proper, it was his duty to have put them in evidence.

Mr. PORTER—I am very reluctant to interfere with counsel, but I trust your Honor will say to the Jury that we have not the right to give in evidence the declarations of Horace Greeley.

Mr. FOSTER—They had a perfect right to introduce the letter of Mr. Littlejohn to Horace Greeley, and his response to it.

Mr. WILLIAMS—Could we introduce the paper?

Mr. FOSTER—You could introduce the letter and the paper. Well, on the 26th of November Horace Greeley writes a letter to Mr. Littlejohn in reference to an article which he had published on the 23d of October—an article in which he admits that he charged upon him in substance, with having been indicted in a neighboring State for crime.

Mr. PORTER submitted that they were not at liberty to use a paper which was not in evidence.

The COURT said the letter had been put in evidence.

Mr. FOSTER—It seems from this letter itself that previous to this time, and after the other publication to which I have alluded, Horace Greeley saw fit to charge the plaintiff with having been indicted in a foreign State for crime. He professes in this letter to have obtained the information—which he admits was inaccurate—from Mayor Wentworth of Chicago, and yet he swore on the stand that he had not seen Mayor Wentworth for a long time, and that he obtained the information which he had in the Fall of 1858, and even then he did not obtain information from Mr. Wentworth; that the indictment was against the plaintiff in this case. But he left you to suppose from his testimony on the stand, till we cross-examined him, that Mayor Wentworth had corrected his mistake, and in consequence of the correction of Mayor Wentworth, why, he was willing to correct the mistake under certain circumstances, yet, I say, it turned out on the cross-examination that he had not seen Mayor Wentworth in the meantime, from the time this article was published till the time he was applied to for a retraction of it, and that is the "noble letter." It is a scandalous letter, degrading to any man of character who would write it—*utterly degrading*—I care not who he is, or what he is, or what his pretensions are!—utterly degrading to him as a man of honor! And if I wanted to show that Horace Greeley was steeped in malice toward Mr. Littlejohn, he has furnished the most irrefragable evidence of it in this letter. He has stated on his oath that he never

had information that De Witt C. Littlejohn had been indicted, or that a requisition had been made by the Governor of another State on the Governor of this State for his rendition as a fugitive from justice. Yet when called upon in many terms to correct the error—I will do so, he says, upon the condition that you will consent that I shall slander Mr. Fitzhugh, one of the most honorable men in this country. What reason on earth was there why Horace Greeley should not say in his paper: "I was mistaken in the article charging Mr. Littlejohn with having been indicted; it was founded upon a mistake, and I withdraw the charge."

What right had he to impose upon Mr. Littlejohn that he should be a party with him in an assault upon his friend, Mr. Fitzhugh? Is that the way to do a man justice and repair an injury to him? He calls Mr. Fitzhugh his (they have it brother-in-law; they have copied it wrong,) father-in-law. That shows again how reckless and careless he is in his statements, as well as in his letters and in his articles in *THE TRIBUNE*. We all know there is not the slightest relationship or connection between them, except that of business. And if I am assailed by a libeler, and when I satisfy him, and he is satisfied himself that he has libeled me, am I to get justice done me upon condition that I will consent, and that I will be a party to his assault upon my father-in-law, or my wife, or my child? Why, gentlemen, it is the first law of human nature, so far as human nature is high and honorable, to repair an injury which has been done. Tell me, gentlemen, what obstacle was in the way of Mr. Greeley's saying in his paper: "We were mistaken when we charged in the article on such a day that Mr. Littlejohn had been indicted in Illinois, or that Gov. Bissell of that State had issued a requisition for him upon Gov. King of this State." Tell me what earthly reason was there why no just retraction should be made, and why Mr. Greeley should insist upon the condition that he should have Mr. Littlejohn's consent to utter foul and infamous assaults against another man who was his neighbor and his friend? Now, gentlemen, all this pretext that Mr. Fitzhugh was an intimate friend of Mr. Greeley is mere pretense; there is no intimacy between them, and never was. And such is the case, and has always been, between Mr. Littlejohn and Mr. Greeley. They have belonged to the same political party, but they have had no intimacy. We deny it emphatically, nor can Mr. Greeley state the time that Mr. Littlejohn, when in New-York, ever called at his office to see him. We deny the intimacy. We don't mean to say that they were on bad personal terms; but we say this, in answer to all this talk about their being intimate friends. They belonged to what has long existed as different interests in the same party, and each knew the place, with reference to those divisions, in which he stood and in which the other stood.

But there may be some motive for assailing Mr. Littlejohn. Mr. Littlejohn has occupied, prior to these assaults upon him, a very high and honorable position among the men of talent (and intelligence in this country, and all over this State. No man has been Speaker of the Legislature for a great many years so many times as he; no man has been more heartily supported by his constituents than he has; and until these charges were made against him, his private character was without a blemish. He had been unfortunate in business, and who has not? Who could say he could ride out the storms of 1857 in safety? Who could lie down at night in the Autumn of that year with the full assurance that he could wake up solvent the next morning—especially if he were engaged largely in the purchase of grain? Men can bear their providential misfortunes, because they come from a hand that is always filled to the last and to the end with kindness. But that is enough without being assailed by ruthless libelers and having their character destroyed; and at the very time, too, when they most need it; when all their earthly substance is swept away from them.

[The Court here took a recess till the afternoon.]

AFTERNOON SESSION.

MR. FOSTER RESUMED.

I was commenting, gentlemen, on this letter of the 26th of November. It says:

"OFFICE OF THE TRIBUNE. }

"NEW-YORK, Nov. 26, 1860. }

"GENTLEMEN: I have your letter of the 24th this moment.

"A simple allusion to Mr. Littlejohn in THE TRIBUNE occurs to me as having given warrant for your demand. It was that in which I spoke of his having been wanted in Illinois. My authority for that statement is John Wentworth, Mayor of Chicago; but it now occurs to me that the requisition of Gov. Bissell on Gov. King was for Mr. Fitzhugh, the father-in-law and business partner of Mr. Littlejohn, not for Mr. L. himself."

And what difference could it make, I ask, whether Mr. Fitzhugh was Mr. Littlejohn's partner in reference to whether he should do justice to Mr. Littlejohn or not in retracting the article he had published. Had he any right to claim that Mr. Littlejohn should consent that he might assail Mr. Fitzhugh before he would consent to do justice to Mr. Littlejohn? And yet the counsel puts this forward as a case of great promptitude and willingness on the part of Mr. Greeley to do Mr. Littlejohn justice, and to my utter surprise, to verify the position of Mr. Greeley, he tells us that one partner is answerable for the acts of another. In a certain sense, gentlemen, he is. If one of two partners makes a contract, the other co-partner is bound peculiarly for the performance of the contract on the part of the co-partnership. But where on earth, except at Albany, is it held that one co-partner is liable for the indictments of another? Where on earth else is it heard of, that you have a right to slander one co-partner for acts charged—though they be not criminal—on another, without any participation in them in the slightest degree? adding insult to injury! When a man asks for redress from a false charge, then to turn around and insist that he must consent to let his co-partner be assailed! And this is high-minded and honorable conduct on the part of the principal editor of the Union.

"though I understand and believe that it was on account of partnership transactions."

Well, suppose it was? I take it if the people of Illinois had a complaint to make against Mr. Littlejohn for any conduct of his they would indict him for it, and not indict Mr. Fitzhugh alone. I deny that there is any principle that imputes to one man the crimes of another. It is enough for us that we have to bear our own infirmities, and the responsibilities of our own acts; and no man has any right to throw any greater load upon us than that which it is our duty to bear. It shows the recklessness with which shafts are aimed from that almost all-controlling press. It shows how careless they are in their statements, and how they scatter broadcast over the land insinuations against the character of men who differ with them. I concede to the editor of that paper talents of a very high order; I concede that in the main he is an honest man; but I have a right to assert, however, that he is utterly impracticable when brought into connection with any body else, that he knows no such thing as molding opinion by opinion, that he knows no such thing as being influenced at all by the opinions or knowledge of any other man—he is utterly impracticable, wedded to his own sophistries and dogmas entirely.

"If Mr. Littlejohn desires that I shall ascertain and publish the exact facts in the case, I will gladly do so."

What has Mr. Littlejohn to do with the facts in the case? How is he connected with them? Why was he to be asked to consent to a publication of the exact facts, as long as they did not regard him or affect him in any way? Why should he be mixed up in this matter in any shape, so long as it is conceded that the charge never emanated from Mr. Wentworth against him at all? Why should such claims be insisted on by an honorable man, who claims to be honorable among

his neighbors? The only principle I know of, is—that ample justice should be done for the wrong; and then let the wrong-doer look about to see if any other person is properly subject to his assaults—but let him be just first! Do justice unqualifiedly and without condition. He who denies the right of his neighbor to unqualified and unconditional redress is unworthy the situation that enables him to wield the terrible power of such a press as that.

"I have hesitated hitherto, because Mr. Fitzhugh is not in public life, is an old man, for whom I have the kindest regard, and whom I do not wish to drag before the public in any unpleasant connection."

Then why does he want the assistance and consent of Mr. Littlejohn to drag him before the public? And why does he make it a condition upon which alone he will do justice to Mr. Littlejohn, when he confesses that he never had a syllable of information against him, from any person in the world?

"Still, if Mr. Littlejohn desires a correction of this statement made, I will do it cheerfully, and in exact accordance with the facts."

No fact is material to Mr. Littlejohn except one—that he is not the party who has been indicted in Illinois, and for whom a requisition has been sent by Gov. Bissell to Gov. King. What else has he to do with it? He confesses here that there was no indictment against him and no requisition for him. Then why not say so like a man, and place his columns in a position to be entitled to credit when they shall assail some other man? But the honorable man is willing to do more. He is willing to take back the libel he has uttered on being *satisfied*! Mr. Littlejohn complained that he had been assailed in the article for which this suit is brought; he complained in this letter of the 24th November, long before the suit was brought, with a view to avoid litigation—desiring not the money of Mr. Greeley at all, but desiring to have his fair fame vindicated from the unjust aspersions cast upon it.

"As to all other matters which Mr. L. may have to complain of, I have only to say that I shall very gladly correct any misrepresentation I have made that may be shown to me to be such."

Why, the editor of THE TRIBUNE not only holds a position from which he can assail all mankind—according to the doctrine of his counsel—with impunity, but he holds a Court—a Court, too, unknown to the laws of this State—and a judiciary of his own, at which he insists that those who have been injured by his conduct shall come, and show him that they have been wronged—he, whose duty it is to inquire, before he wrongs them, whether he is doing a wrong; then, when they claim that he has wronged them, he very quietly asks them to come and cool their heels in his antechamber, until he shall have leisure to examine into the truth or falsity of these accusations which he has made? Do you believe in such arrogance as that? Are you willing to bow to the influence of a press that issues editions of 250,000, and to concede for a moment that those assailed throughout the length and breadth of this broad country, and among the nations of Europe, can only obtain redress, no matter how clear their claim may be, until they come into the presence of this august traducer, and satisfy him that he is wrong? Submit to such things, if you will. I will be no participator in any such fawning sycophancy and degradation as that!

"But I cannot change my opinions with regard to much of the legislation of last Winter, whereof Mr. Littlejohn was a prominent advocate. I consider that legislation every way wrong, unjustifiable, and corrupt; and, while I do not know that Mr. L. received any money for his share in it, I deem it of such a character that it would be no less objectionable to my mind if I were convinced that he bore his part in it without hope or expectation of reward."

He goes on to set up his opinions of the legislation of that Winter. It is not a question of opinion, gentlemen; it is a question whether in truth and fact his

charges against Mr. Littlejohn are true. That is the question. The opinions of Mr. Greeley may be entertained upon a wrong foundation, as those of any other human being. He is not above the infirmities of human nature. He has no infallibility, unless presiding over the columns of a newspaper which issues editions of 250,000 raises his character and gives him attributes which do not belong to humanity at large. Certainly his paper is evidence that he is not above error, for after all his inquiry about this matter, he has not yet found out but Mr. Fitzhugh is Mr. Littlejohn's father-in-law. He is willing to commute if Mr. Littlejohn will consent that a man whom he calls his father-in-law is the guilty person, and that it was in regard to partnership transactions.

"If you will point out to me the averments in *THE TRIBUNE* that Mr. L. demands should be retracted or corrected, I will do whatever seems to me just, but no more, because Mr. L. threatens me with a libel-suit. Indeed, it is probable that, in the absence of such threat, I might be induced to go further than I would otherwise have done. But, whether threatened or not, I shall be at all times ready to undo any injustice I may have committed."

"Yours,

"HORACE GREELEY.

"Messrs. MARSH & WEBB, Oswego, N. Y."

Why does he not say I will do whatever is just and right? What does it mean, more or less, than that "I will do just what I have a mind to" about it, irrespective of what all the rest of the world may think with regard to the truth of the matter charged, or the motives by which I am actuated in making them? And that is the "noble letter," gentlemen, in which a freeman of your county has been assailed, in the most outrageous and unjustifiable manner, by him who sits at the head of *THE TRIBUNE*.

Is this article libelous? Did Mr. Greeley mean to charge Mr. Littlejohn with corrupt motives? Aye; I have it under his own oath that he did. My learned friends have shirked his answer entirely in their arguments; they have ignored it altogether. Mr. Littlejohn, when he commenced this suit, began by filing a complaint under oath, and in this oath he charges that these things are untrue and libelous, emphatically and distinctly. And by filing this complaint under oath, he compelled Mr. Greeley to make answer, and he did so. I hold in my hand a copy of that answer, which was served upon the attorneys of Mr. Littlejohn by the attorney of the defendant. You will bear in mind that all this answer is shut out by the Court, except the second and fifth answers, one of which justifies the charge to its fullest extent, and the other states the same facts in mitigation of damages. And the changes have been rung here by the counsel that he has not charged Mr. Littlejohn himself with corruption, but that he voted for these bills, which were corrupt; and that he has been prominent in this corrupt legislation, and that he never meant to charge him with being corrupt himself. We will see in a moment, if there is any value in language, if he has not so charged him. He has not only denied him any retraction, but he has followed him into Court here, and placed upon the records of the Court for all time, this malicious and defamatory charge, and put it in the broadest language which he could find for that purpose. The counsel have talked about bribery, and have called your attention to the fact that they have not charged him with that. Bribery and corruption are two different things—they are not synonymous terms. There is corruption where there is bribery, but there may be corruption in a dozen instances where there is no bribery. Well, in this second answer he goes on to enumerate these four Railroad bills, and also this bill in relation to the West Washington Market, and he charges that they were corruptly passed. Then he says:

"That the said plaintiff, in fact, was active and prominent in said legislation, to wit: as Speaker of the said House of Assembly, and otherwise actively exerted himself in procuring the passage of said acts in the said House of Assembly, and did, as a member of the said House, therein advocate and vote for the passage of the same, publicly and privately, and was generally

known to favor and to be in favor of said acts, and of the passage thereof respectively."

"As to each of the said acts the said defendant says that at the times when the same was passed and was so voted for by the said plaintiff, the same was, ever since hath been, and still is, of a nature and tendency highly prejudicial to the interests and welfare of the people of this State; that at the time when he, the said plaintiff, so voted for the same, he, the said plaintiff, well knew and fully believed such to be the evil nature and tendency of such act."

A direct charge of corruption; and he voted for them believing and knowing that they had this tendency for evil.

"And, as he also well knew, was bound in law and morals, and by his duty as such member of Assembly, to vote against the same."

Charging him with knowing that it was his duty to vote against them:

"Yet he, the said plaintiff, wickedly, willfully and corruptly disregarding his said duty in that behalf."

No personal charge here, my learned friend?

Mr. WILLIAMS—Are you trying us on the answer?

Mr. FOSTER—I am trying no motive now. I am showing whether you have furnished evidence by your justification of express malice. That is what I am doing, and I trust I am succeeding with all who can listen and weigh patiently our own acts and doings.

Mr. PORTER—I presume my friend does not mean to mistake us; but it is due to us that we should state our exact position, which he seems to misunderstand. I said the article did not charge him with corruption, but the complaint alleged that we did charge corruption, and in the answer we did charge it in the broadest form; but we are not prosecuted on the answer, but on the article.

Mr. FOSTER—And there is no principle by law better settled than that when you put in a charge in your justification; that charge on the record is evidence against you. But what a dilemma do they put Mr. Greeley in here; he swears in his answer that he did mean to charge him with corruption.

"And with the dishonest intent and purpose of working such prejudice to the interests and welfare of the said people, and sacrificing the same to advance the personal and individual interests hereinafter in this defense stated, did vote for such act as aforesaid; that said plaintiff's motive in so willfully and corruptly voting for the said first-mentioned act was so to advance the personal and individual interests of James B. Taylor and Owen W. Brennan, and divers other persons interested therein, and that as to each of the other acts above mentioned, his motive in so voting for the same was so to advance the personal and individual interests of the persons named in the first section of such act, and of divers other persons interested in said acts respectively, as the defendant is informed and believes."

And yet it is contended that he published this article with pure motives, and believing it to be true. And now we have this other and very strange conclusion asked for by my learned friend—that the publisher of a newspaper, if he chooses to step one side, can allow anything to appear in his paper, and then shirk responsibility by coming into Court and swearing that he had no malice when he published it. There is no principle better settled, than the publisher is just as guilty in such a case as if he had written it himself.

But the learned counsel who opened this case placed editors on a level with common carriers, and insisted that they had duties to perform, that they had duties to the public, and if they even suspected wrong they were bound to let it be known; if they heard anything wrong they were bound to tell it, and if they knew anything wrong it was their duty to disclose it. They should have taken the other side of a carriers' duty—a carrier is bound to carry all the articles of those who choose to employ him. But there is another principle—he must carry them safely, and the law holds him responsible for any negligence on his part. He is responsible to the owner for any loss by robbery or theft from outsiders. How would my learned friend like to have that principle applied here? The editor is bound, if he stands on a par with carriers, to see that his paper does not traduce anybody; he is bound to see that the interests of individuals, as well as the public interests committed to his charge (I don't

know who committed them, but suppose they are), are carefully protected; and that no man is allowed to be demolished by the strong hammer of THE TRIBUNE! And more especially, like the common carrier, should he be bound not to rob the packages himself! This man, who holds all these public and private and individual interests in his hand, should look to it that he does not willfully damage them himself! He must so conduct all the business that is intrusted to him in this mysterious manner as to have everything go safely to its destination. The common carrier is liable for loss by fire; fire without his fault; he is bound to protect it against all but the acts of the public enemy, and see that all arrives safe and in good condition at its place of destination. Let my learned friend, when he assumes the rights of a common carrier, assume also his duties, and to especially not to turn robber of public or private character himself. Gentlemen, I want to adopt, as a portion of my argument upon this point, the language of one who has had time to condense his thoughts, and to speak in a form much more entitled to credit before a jury, than can be given to a counsel summing up a case before a jury. It was an action for libel against an editor of this county for copying from another paper an article, and publishing it. [The counsel read from 2d Hill, 513, the opinion of Chief-Justice Nelson.]

Yes, before these editors and publishers can claim the exception which is claimed here, they must get some statute passed, which shall wipe out the provisions of the common case, and the conclusion of the common law. When that day shall arrive that any free country on earth allows the press to take the private morals of the country into their hands and in their protection, then farewell to all that is desirable in the condition of man; for no despotism would be so galling. You cannot fight against the press, you have no standing-place. What can an individual do against the editor of THE TRIBUNE? Where can he find a place on which to meet his attacks—and how can he continue the battle against him? In such a conflict he would be inevitably worsted so far as appearances on paper are concerned. An editor has all the appliances and means to make his warfare effectual and continued.

Now, take the idea if you please, that Mr. Greeley knew nothing of this article until it was published; that he had nothing to do personally with having it inserted in his paper; how stands his answer which he makes under oath, and where he in express terms admits that he procured it to be published in his paper? Let the counsel reconcile these things if they can. They should have done it as they went along; instead of traveling out of the case continually. In my judgment it would have been better to have been stopping the weak places in their case.

We think there will be no difficulty in your minds, gentlemen, in the first place that this article is libelous *per se*; that is, there is enough here to show that it was maliciously published—that is, what the law terms malicious. And it is no excuse for an editor to go on the stand here and swear that he had not any bad motives in having it published. If he is to be believed here, he had no motive at all, for he did not know of it. And yet Mr. Greeley is held up by his counsel as a person who is striving to purify the public legislation of the country. Yet it turns out here, by his own showing, that *non constat* he was asleep when all this was done. Ah! he should not have been asleep; he should have been wide awake and seeing what was being put into his columns, day after day, derogatory to the character of individuals. It has been decided repeatedly, gentlemen (and this case of Hotchkiss against Oliphant decides it), that an action for libel against the proprietor of a newspaper edited by another, though the publication may be without his knowledge, yet it is a libel on his part, and he is liable to be prosecuted; though so far as actual motive is concerned there could have been no bad motive.

But the law holds him all the while to keep his paper under his control, or under the control of some one who will see to it that nothing libelous is permitted to enter there. This article then is libelous; there is no privilege on the part of the defendant; and malice is shown to all intents and purposes, as the law requires it in order to sustain the action.

Now, gentlemen, is the libel true? Bear in mind that this cause is to be tried upon the evidence; and I beg you not to forget that; if you do you may be led astray. You are not to take the declaration of counsel; you are not to take rumor with her hundred thousand lying tongues. You are not to try Mr. Littlejohn by what has been said out of doors, or what has been said here by counsel. There is only one way in which the defendant can escape a verdict against him; that is by proving the libel to be true, and proving it by testimony, not by declamation, not by reiterating slander here by the mouth of counsel; not by reiterating that certain legislation with regard to the City of New-York was corrupt; not by proving that Mr. Greeley believed it to be corrupt; not by presses in all parts of the State charging, if you please, that it was corrupt. That is not evidence to satisfy a Jury. You are not to decide this case upon slang which has been uttered here or elsewhere. You are not to take as part of the testimony in this case, that the West Washington Market Bill was corrupt, because in the first place, there is no evidence to show it; and in the second place, it is an utter untruth; not altogether, but the greatest part of it is untrue. You are not to take it for granted that the legislation with regard to that law was corrupt—the veto of a Governor is no evidence of corruption in the Legislature, when it has discharged the duty as well as the right of two-thirds of the House present when the veto Message is returned, to pass that bill if they approve of it over that veto of the Governor, as it was originally passed by a majority vote before the veto was introduced. Men we make Governors we don't make despots; we elect a purely executive officer, having nothing whatever to do with legislation, except by his message to present the condition of the State, and to recommend the passage of such laws as he pleases. But that imposes no obligation upon either House of the Legislature to pass a single one of the bills he proposes, or to favor one of the measures he proposes. He is authorized to sign all the bills which he approves that are presented to him after having passed both Houses; and he is authorized in case he disapproves any of them, to return them to the House with his objections, within ten days after he receives them; and then that same Constitution provides, wisely provides, that after a bill has been returned with his veto message, two-thirds of the members of each House present, shall pass it if they are in favor of it, notwithstanding the veto. And yet Governors are talked about here, as though their will was to be law. But the representatives of the people are sent there expressly for the purpose of legislating and of devising bills which are to be passed, determining in the first place whether they shall be passed, and determining in the last place whether they shall be passed over the Governor's veto.

We have been treated here to an eulogy on English legislation and the purity of English legislation. How pure it was on that day when my friend stood on the floor of the House of Commons, I cannot say; but if he has read the history of Lord Walpole's administration he would have found there more corruption than ever existed before or since in that or any other country, and yet he talks about the purity of English legislation as a thing to be adopted by American citizens; and the fact that there has been but one veto there in a century which my learned friend has been able to ascertain, what does it prove? It is not her Majesty who signs a bill or directs whether it shall be signed or not; it is her Majesty's ministers, her Cabinet; and unlike an

American Cabinet which does not control the President, it is the perfect understanding there, that the advice of the Cabinet is to be followed by the King or Queen, as the case may be; and whenever that fails and there is a disagreement between the King or Queen and the Cabinet, then the Cabinet resign, or else they are removed instantly. And they have another doctrine there, gentlemen; when the House of Commons by a decided vote, votes against any measure of the Government, of the Administration, the Ministers resign immediately, as a matter of course, and her Majesty, or his Majesty, appoints an administration according in principle and in views with the majority of the House of Commons upon the matter in question.

Now what is the evidence of corruption in any of these bills, and where is it? Where, except in the language of the counsel, do you find it? I mean before you, as jurors acting under an oath, to be governed by the testimony given before you. Yet they say the evidence was excluded. Suppose it was: the case is not to be tried upon what we may suppose to have been the evidence if it had not been excluded. The admission or exclusion of evidence lies alone within the province of the Judge, and it is the duty of counsel to use, in their argument to the Jury, and the duty of the Jury to use, when they retire to the jury-box, the evidence which was received and which is before them in the case. But my learned friend has said, "These statutes need not be in evidence; they are on the statute-book, and the Court will take judicial cognizance of them, and the Jury will take judicial cognizance of them"—as great a fallacy as ever was supposed, in my judgment. But I am perfectly willing to meet him there. Now, I am going to talk a little about this West Washington Market bill in answer to my friend who opened this case, and who denounced it in all shapes and forms—as indeed both counsel did. If they could present that opening as testimony, they would be much less able counsel than I take them to be, if they could not make out a case. You will bear in mind, as the counsel who opened this case has told you, that this land, which was used for the West Washington Market, was on a spot which was once out beyond low water mark, and docks and piers were extended out, and, in consequence of that, earth formed there from the action of the currents and their disturbance, and that the city proceeded to fill it up and made land there; that the city alone expended all the money that was expended, and the State never paid a cent; and but for the erection of these wharves and piers, there would have been no land there, but water, as it always had been. It was these obstructions which caused the eddies, which threw out of the current the passing soil which flows in the stream, and thus made these little islands or accretions to the land. It was made, too, at the expense and by the efforts of the city entirely. Somewhere along in 1855 or 1856, the attention of the State officers was called to the fact that there was land there, where it was originally water; and the claim was interposed that the State, as paramount owner, was entitled to all the lands thus made. Bear in mind that all the time the State had never reaped a sixpence of compensation from it at all, and had never expended a sixpence in any way or in any shape whatever. Upon the attention of the Commissioners of the Land-Office being called to the fact, they executed a lease to Taylor & Brennan, or to Taylor alone, and that lease had to be renewed from year to year. Now, it is a grand mistake in my friend when he says that the city made \$115,000.

Mr. WILLIAMS—But it is in proof.

Mr. FOSTER—Where?

Mr. WILLIAMS—In the West-Washington Market case.

Mr. FOSTER—I have reliable evidence that the city did not receive \$5,000.

Mr. WILLIAMS—It is in a law book.

Mr. FOSTER—That is not evidence here. I repeat,

the State never received a cent for it, and the Attorney General advised against any suit upon the ground that the State would not obtain it.

Mr. WILLIAMS—What is the evidence of that?

Mr. FOSTER—Just the same as you had in the opening.

Mr. WILLIAMS—That was upon facts I expected to show.

Mr. FOSTER—You did not expect to prove them.

Mr. WILLIAMS—I did expect to prove them and will now if you will let me.

Mr. FOSTER—Well, they got this land and what was the result? Out of this land which cost the State not one cent, they have reaped \$300,000; the money is in the treasury to-day—that is not disputed. Gentlemen, what was the character of that law? It was just, benevolent and right in its purpose, and it was just such a law as the State would be bound to pass in a question between it and the city, through whose means alone such claim as it had had come to its hands. That law directed the Commissioners of the Land Office to sell the land to the city upon such terms as were equitable and just, taking into consideration the fact that the accretions had been made to a large extent by the expenditures of the city. Was not that just? Which of you would stand ready to pick the pockets of the city?

A JUROR—This land, then, was not sold to a Corporation or body of men?

Mr. FOSTER—No, Sir, not at all.

Mr. WILLIAMS—It was sold, and we have the proof of it here.

Mr. FOSTER—Yes, Sir, and I am going to tell how it was sold. [The counsel then read from the West Washington Market act, reading the 2d and 7th sections.] Is not that just? And where is the man that will deny its justice, or claim that it goes one step further than the city was in duty and honesty bound to go? The seventh section directs the Controller to buy the land upon such terms as he shall deem most just. That is what he is directed to do. What is there in that, gentlemen, that shows evidence of corruption? He is directed upon such terms as "shall be satisfactory to himself," and he is not directed or authorized upon any other terms to pay one dollar more to any body of men, or any man, than he deems to be just and right. These are the two great objectionable features of that bill. In other words, the Commissioners of the Land Office, your own State officers, a body of men in whom you can have confidence, if in any body, for they are elected by the people every two or three years—they are authorized to sell this land upon terms which are just and equitable. That is the length and breadth of the West Washington Market bill. The city authorities, because they deemed it right and prudent to do it, paid Taylor & Brennan and their associates such sum as they chose to pay—not as they were bound to pay—but as they chose to pay, for their outstanding claims. And you will bear in mind that this arrangement was made with Taylor & Brennan after their judgments were set aside. And that is the corrupt legislation of 1860! I have read you the sections which have been relied upon to show that this legislation was corrupt. I should be ashamed of the citizen of the State of New-York who should claim that, when the city had reclaimed all this land, the State should take it, irrespective of what they had paid for it! I should be ashamed to be a citizen of a State that should attempt to reap where they had not sown at all. And I would be ashamed of the legislator, be he who he may, who was opposed to such a bill as that, and there would be no day of my life that I should regret that I had dealt with the City of New-York fairly and honestly, putting it in the power of the State officers to do what was right with the city. Gentlemen, that bill is a fair sample of all the others, the Governor's veto of the one to the contrary notwithstanding.

Why, they tell us, with regard to these railroads about which we have heard so much, that there is a great necessity for these railroads in this city, which they say is fifteen miles long. The Governor, in his Message, desires the same roads, and so he desires, among other things, that the fare on all the roads should be equal. Have my learned friends attempted to deny that the fare in these bills was precisely the same as what they were on the old roads? Why, what is one of the great faults that the Governor finds with these acts? They don't pay a large bonus into the City Treasury for you and I to pay whenever we ride, as we frequently do, on those railroads in the City of New-York. They don't pay a large bonus to relieve men from paying for the improvement of the city in proportion to their property. They don't pay a large bonus into the City Treasury in order to relieve the rich and compel the poor to pay a larger price for traveling than they otherwise would. For all that a railroad corporation or any other corporation pays in the way of a bonus is estimated in its capital stock, or to the holders of that stock, and the managers will see to it, if they can, that they shall reap a fair reward for all their investments, in whatever form. I do not blame Gov. Morgan for desiring that the class to which he belongs should escape taxation. I do not blame the slaveholders of Baltimore that they should have a Park more expensive than our own, built by the poor who ride in the railroads and public conveyances, and who have to pay this bonus! I mean I don't blame them so far as their own class is concerned. But I say Gov. Morgan is worthy of blame if he attempts to foist these obnoxious principles into these bills. Suppose all the railroads through our country had to pay a bonus on their charters. This would relieve the rich from taxes, but would necessarily impose upon the passenger an additional burden; and I am thankful, for one, that the Legislature did not adopt any such provision in regard to these railroads in the City or New-York. And I trust, gentlemen, that when any of you use those roads you will be able to recollect that you are not paying a tax into the Treasury of that city, whose business you increase by your business there, and whose prosperity you pamper by your business. There is scarcely a railroad in the State that charges the fare allowed by law. The New-York Central, with its fare reduced to two cents a mile, does not charge even that; while if they had paid a bonus of \$10,000,000 to the State they would have to increase the fare in order to reap a fair investment on their capital. Yet if I were a rich man in the City of New-York I should admire the logic of his Honor the Governor.

Now, was there no necessity for railroads when these bills were passed? Let my learned friend speak. He has told us of the Third, and Sixth, and Eighth avenue roads extending to the upper part of the city, with this same rate of fare, and with cars calculated to contain 40 people comfortably, and yet he has told you that at nearly all hours in the day, from morning till late at night, there are generally from 60 to 70 hanging on to these cars, many of them at the imminent hazard of their lives; and yet it is wrong to have railroads unless you can have them with the Governor's particular principle attached to them—that a *bonus* must be paid into the City Treasury! But, gentlemen, his Excellency discovered that these acts were grants in perpetuity! You have heard of those who see things which are not to be seen? and the same difficulty seems to have existed with him that exists with my learned friend in this respect. I will endeavor to show you that they are not in perpetuity at all; but that they can be repealed, whenever the Legislature is in session, if they desire to do so. My learned friend says they cannot be repealed because they are not joint stock companies, but they admit that the Legislature has provided for repealing certain corporations and joint stock companies. Now, it is not necessary

that a thing should be called a joint stock company, or a corporation, or association in order to make it so. The question is simply whether they exercise the rights of associations, the rights of corporations, or the rights of joint stock companies? In other words, do they exercise rights which individuals as such, and copartners as such, cannot do? Can individuals exercise the right of laying railroads through the streets of the City of New-York? Can a partnership be organized for such a business as that? No. They must have, in addition to the associating together of the persons and individuals, a franchise granted by the Legislature of the State, which alone can grant it. We have a little instrument here called the *Constitution*. It is small, as my learned friends say, but it is very potent indeed; and I want to call your attention not only to the 3d section of the 8th article, but also to the 1st section. There will be no mystery then, and I think no question but that the Legislature can, at any moment they please, alter or repeal any of these charters as they see fit; and that the grant is upon this constitutional condition that the Legislature shall have that power. The 1st section of article 8th says:

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be obtained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed."

And these are just such cases, and you will find them acted upon in Syracuse, New-York, Buffalo, Brooklyn, and I don't know but other cities. "And may be from time to time repealed." It is not necessary to insert them in the bill, for here is a bill that cannot be controverted, and which overrides all other bills and all other acts until the people, in their majesty and in a constitutional way, shall wipe it out, and place another in its stead; and the third section of this article says:

"The term Corporation, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships."

Is it not one of the incidents of a corporation to be allowed to lay down rails and carry passengers on a railroad?

But, gentlemen, there is another difficulty with this bill which the Governor has found out, and which in his opinion, and the opinion of Mr. Greeley, is evidence of fraud and corruption on the part of the Legislature. They provided for this monstrous principle that suits to be brought by and against these companies shall be tried in the First Judicial District of New-York! Well, now, in the first place, they have not construed the meaning of this section rightly at all; it refers only to the suits to be brought in pursuance of this act; as for instance, where any difficulty might arise between the city or the property owners fronting on the streets in which the roads were. It was never intended to relate to suits between them and individuals. But whether it was or not is of no consequence whatever, as I will show you by another constitutional provision. Now, you will bear in mind, that Mr. Conkling testified here that he believed that Mr. Littlejohn took no part in the debate on those bills, but believed he did on the West Washington Market bill; but not on these railroad bills when they were first passed; but he did after the Governor's veto was presented. The Speaker does not draw up the bills, and he is not accountable for their form; he is accountable only to the same extent as any other member of the Legislature, to see that they contain no principle injurious to public property, so far as he can under the circumstances of the case. These bills passed in the first place with all their features, without any attention being paid to them, so far as the Speaker was concerned. Now, gentlemen, there is a little rule of parliamentary law, which provides that when a bill is returned under the veto of the Governor it cannot be amended—you have

got to take it and pass it over his veto as a whole, or not at all. There is a little clause in this same 3d section of the 8th article, which makes it wholly unimportant what the law itself may have declared with regard to the Court in which suit shall be brought:

"And all corporations shall have the right to sue, and shall be subject to be sued in all Courts, in like manner as natural persons."

Now, gentlemen, should that bill have been killed because it contained this restriction? When it was utterly useless as coming in contact with the Constitution and could work injury to no human being whatever? But "there were no articles of association." There are none in any of these Railroad bills; there is not in any case where a charter is granted by special act; and you may go back to the foundation of the Government and find no such thing as an article of association in the statute book. It is only where associations are formed under general laws, where companies are authorized to make special charter for themselves, and limit its duration as they may to 10,000 years under the general Railroad act. And there is no power to repeal it, except that which I have referred to in this first section of the Constitution. And you know that railroads which are organized under the general Railroad act, do limit the duration of their charter to a thousand years, and some of them even more. And a thousand years is just as objectionable as a million is, because it is too far in the future to remedy any difficulty which may exist. And this twaddle, for it is but twaddle, let it come from what source it may, that where a special charter is granted there are in it articles of association, is perfectly preposterous. I should like to have my friend sit down and hunt up the statute authorizing a special charter and providing for articles of association. You can find it in the acts where several companies are consolidated together in a general act, as in the consolidation act for all the railroads between Albany and Buffalo.

But the Counsel says: "These railroad charters given as they are here, are intended to keep out all other railroad corporations." Well, what of that? What would a charter be worth if it did not do this? Who would venture to build a railroad in Avenue D, if another company could come and put another road in the same street? Who would take a charter or invest a dollar in such a concern as that? Does it not obtain in all other charters? And if it were a power to be exercised by the Legislature, after having passed a charter for a railroad through the length of our State, with the additional right to alter or modify or repeal the charter and lower the tariff of prices; who would expect to see an honest Legislature authorize another railroad to be laid right along side of it? But I have spent more time, gentlemen, upon these statutes than they are worth; yet it is proper that a little of this mist and darkness which has been attempted to be thrown around this case, should be dissipated, and that these acts should be placed in their proper light. One of these very acts, which they denominate the "Belt Road," and which the Governor vetoed, had in it this express provision for its repeal or alteration. Yet it falls under the same fell swoop of his Excellency's veto. I want to say another word, and give you the history of that legislation, and see whether his Excellency, notwithstanding this veto, addressed undoubtedly to the popular ear, might not have substituted something better, if he thought these bills so injurious to the public interests. On the 10th day of April, 1860, these five bills with regard to railroads were returned from the Senate to the Assembly, with the concurrence of the Senate thereto, and on that 10th day of April the Assembly ordered them to be sent to the Governor, who received them probably on the 11th. He knew perfectly well that it was decided by the concurrent vote of both Houses, long before he vetoed these bills, that

the Legislature should adjourn on the 17th of April, seven days, at the most, from the time he received these bills. There is another instrument of this little book, the Constitution, which provides that the Governor has a right to hold bills, and unless they are returned to the Legislature within ten days they become laws *unless the Legislature before ten days shall have adjourned*, then they fail. He sent them back to the House on the 16th, when he knew that on the next day the Legislature was to adjourn, and he had only to hold them over until the next day, and they would have been killed so dead as to have never been heard of again. He had it in his power to demolish these bills, but he chose to write a message for the public ear, and thus throw the responsibility upon the House, who did just what he expected they would do, passed them over his veto, and then if there was any public clamor he expected to get the benefit of it; and to get the railroads, too! If he believed them unconstitutional and wrong, what right had he, while holding in his hands the power to destroy them; what right had he to give them up and place them in the hands of a body which the defendant in this case says was corrupt? Better let that incorruptible Governor hold them one day longer, and they would have been as dead, as all the vetoes in the world could make them. And there would have been ample time to have prepared and submitted to the Legislature such bills as it was his prerogative to do, which could have been free from all the objections which he had to these bills.

But, gentlemen, let us see what the Governor himself did in that same year. In 1853, the New-York Common Council undertook by resolution to give to three individuals a grant to lay down railroads in nearly all the streets of New-York. But it was found they had not any such power. They undertook to make this grant for the benefit of individuals and their assigns, just as these bills say. The Court did not sanction right of eminent domain in the city, they chose to reserve it in the State. But in this very year of 1860, and this same session, a bill was introduced confirming these resolutions. The first section grants the permission intended to be given by the Common Council in the resolution passed in 1853, to William Rider, James Murphy, Minor Story and their assigns. There is this difference, in the other bills there was 12 individuals, here there are but 3; but the more exclusive it was the more proper for the Governor to sign. Let us see how far it went—it is pretty *gridiron-y*, gentlemen: "Through Ninth avenue, Gunsevoort street, Washington place, Greenwich street, and such other streets and avenues as are mentioned in said resolution," and the Lord knows how many of them there were. If you look at these five acts you understand the privileges granted; but when you want to learn what franchises are granted in this bill, which the Governor signed without any hesitation, you have to explore the resolutions of the Common Council of New-York for 1853, to ascertain what that statute is. Yet this approved itself to the Governor and he signed it. And, according to the argument of my learned friends, there is no right to repeal this, there is no limitation at all to the fare; they can charge as much as they please; and the bill provides "that this act shall take effect immediately!" But we heard of no veto there? It is no corporation, no joint stock company, and no association; it has no limitations, and no responsibility; and you must search through the archives of the Common Council to find out what is really granted by that law; but it approved itself to his Excellency the Governor. Now, I don't find fault with his Excellency, but upon what principle can it be assumed, in the absence of all evidence, that these five acts which they complain of are all wrong? You will bear in mind, this resolution was passed in 1853, and this law

is passed seven years afterward, and the roads not built then—seven years gone by, and the enterprise not completed! And there is no provision declaring that they shall finish them in any given time. There is not an objectionable feature in the bills of which they complain that is not in that single one. And we heard in the opening that there is another flagitious fault in these bills; we have not heard of it in the evidence; and you will bear in mind that we threw the door open wide in that respect, provided they would consent as a part of their proposition to connect Mr. Littlejohn with the corruption; but we did not deem, nor did the Court deem, if we had consented to it, that it was proper to spend the time of this Jury and this Court in the investigation of a question of corruption of a party of men at large. That was not in issue here. It is the business of legislators to purify themselves of corruption, when they may deem there is corruption in their body. Committees are appointed to investigate into the truth of these charges, and bring the guilty to justice. This was done in the case of a Senator from Long Island in 1830 or 1831, and also in the case of Bishop Campbell in 1835 and 1836, and both these members were expelled. And it has again and again been brought into play; and it has been brought into action in the Congress of the land, and been instrumental to some extent in purifying legislation there. There, in the Legislature, is the place to purify legislation from corruption, and there is the place to attack the Lobby. My learned associate, never said there was corruption in the legislation. He said if we admitted there was corruption in the Assembly, that didn't affect Mr. Littlejohn; unless it was proved that he was corrupted. He said further, if they could convict him with the corruption, then he would concede the corruption in order to give them every facility; but not thus to let them go into the corruption of the Assembly—to go on a fishing excursion here at the expense of the County of Oswego, in the administration of its jurisprudence. Now, gentlemen, I trust I have dissipated all the pretense of corruption. How much there was in that legislation I don't know; I am not responsible for it, for it is long since I have taken any part in politics except as a voter; violent scenes take place on the lobby; nor I cannot tell; the defendant can explain to you better; he was there. "Nothing but good motives actuated this publication," and yet, not content with what I have stated with regard to the matter, he consents to become a member of this corrupt *third* house of that Legislature, and goes to Albany for the express purpose of interfering with the business which belongs to the members alone. What voice had Horace Greeley in organizing that Assembly? What right had he to interfere between the constituents who sent their members there and the officers they were to appoint? It was time enough for him, and it was proper for him, only when they had done their work, to speak. Then, if he is the public conservator of the public morals and legislation, let him speak. But what business had he then with the nomination of Speaker? To go there to lobby—going 150 miles from his home to labor for the express and sole purpose of defeating an individual from being Speaker of the Assembly? Who gave him his commission? Is it in virtue of this right claimed of being an editor? Why, the Lord forgive and save us; these rights are like the rod of Aaron, swallowing up all other rods, legislative or otherwise, and they have a maw as inordinate as that of death! I should suppose, from the tone in which Horace Greeley speaks of the 3d House, that of all things on earth he would scorn to be found there, much less in presenting appliances there to the Legislature with regard to matters exclusively their own. The Court has expressly provided that they are the judges of the election and qualification of their members; and the Court has placed in their

power alone the selection and election of their officers, and any tampering with them, no matter what is assigned as the motive, is suspicious in the highest degree. Gentlemen, Horace Greeley is not conscious exactly, so that he can swear to it, that on the 1st day of January he intended to become a candidate for the Senate of the United States—a proud office, to which the highest of us may aspire; it is in my judgment, to him who can afford it, the first office in the world, a thousand times more to be desired by him whose pecuniary condition will allow him to take it, than the office of President. Few men have filled the situation of President, but have fallen from their high estate; but many a man's honor through life and long after death, has been acquired in this body, which until recently has been distinguished for decorum and dignity. I do not speak of Mr. Greeley for being a candidate; I do not blame him for having Chapman and Opdyke and all these men to help him; but I ask you if there is not some little temptation to suspicion that he wanted Mr. Littlejohn out of the way—he knew him to be a friend of the great man whom they have described as the greatest statesman on this continent, and who was overthrown by somebody at Chicago—perhaps the defendant knows who. The Scripture gives us an instance of the man who felt an unwillingness to have Mordecai sitting at the gate; and I think it is not too much to say that if the defendant had happened to aspire to the office of Senator, it would have been convenient and been easier for him to reach that elevated station if Mr. Littlejohn and Mr. Myers of Syracuse were not there; both of whom were known to be the ardent friends of that great and honorable statesman who now is at the head of this Government. Look and see if you cannot find some motive there, gentlemen, without traveling very far out of this case; see if you cannot ascertain without much difficulty why this ponderous hammer of THE TRIBUNE was brought to bear upon these men, to annihilate them.

But, Gentlemen, only six of the members of that corrupt Legislature, my learned friend tells you, have been returned. Will he tell us what has been the fair average of those returned since the single-district system, when there has not been more than the ordinary corruption which they speak of? When have there been more than six retained in office? Rotation in office is the cry; towns claim their turns; and I think one of the great evils of the new Constitution is the single districts for the House and Senate that have been established.

The next theme of our learned friends, is that the plaintiff has suffered no injury. He has been reelected by his District, and reelected by the Assembly, with a new set of men too, you will remark, with the exception of six; and he has received an honorable, and what was once a lucrative appointment to a foreign country. But are these evidences that he has not been traduced or injured? Gentlemen, De Witt C. Littlejohn was known in this place in the first Assembly District; he had come there as the learned defendant went to New-York, poor; he had been the architect of his own fortunes, and built up a local reputation as high as that which the defendant enjoys in the City of New-York, and by his own sterling industry, integrity, and talent. He has not built himself up to grind other people down, or by wielding an engine of power, with which no other engine in this country can probably be compared. He could meet these assaults in his district and he did meet them there for he spoke in almost every school district there, and he refuted all the allegations of corruption, and he satisfied that constituency that he had been maligned and abused. He did not seek a re-nomination, but it was forced upon him, and when he was placed in the field, he fought that battle as a man should, and he succeeded. Is that any evidence that he had not been injured? He received the election of Speaker of the

House after his arrival at Albany, by an Assembly fresh from their constituents, with the exception of five who voted with him on these bills. He succeeded then, because his friends were the people and these new members were satisfied that all this clamor against him was unfounded and unjust. And he received from the men who appreciated his merits the offer of a high national office. Yes, gentlemen, he received it; but could he accept it, with this cloud over his character? I ask you, could he go as the representative of this nation to England, there to be met by these libelous articles in *THE TRIBUNE* (for they circulate there), and by the missiles which his friend Mr. Greeley would send after him, with no record to show that he had been maligned? It was due to himself, due to his friends, that he should first sustain his character, and wipe off the blemish which had been placed upon it, before he should place himself afar from those who knew him well. How proud a thing it would have been for Mr. Littlejohn, as the American Consul at Liverpool, in passing through the streets there, to have been hooted at as the man who had been the corrupt Speaker of a corrupt House of Assembly in America! I submit that it was his first duty to wipe out this stain on his character, and show the injustice of those who had maligned him, and who had forced him into a court of justice for redress. How could he go and leave this stain behind him? He could not do it. Justice to his family, to himself, to his friends, to the institutions of our country, and to the Government who had tendered him this high office abroad, all required of him that he should not go there with a tarnished reputation.

It is a blessed privilege, gentlemen, that a man can be tried by a jury! It is a blessed privilege when a man can be tried by those whose sympathies are and should be like his own, and who look with indignation upon every attempt of those in power to bear down on those who occupy positions, and whose means will not enable them to return the assaults and fairly protect themselves. Do you care for your interest or your families? Are your own reputations worth a groat to you? Be careful that you don't aid in this over-riding influence of the press! Be careful you don't hold out inducements for it to be corrupt and regardless of the rights of citizens! Public journals are good in their place; but let us look at this point upon which we have heard so much. Who is it writes this article against Mr. Littlejohn? Is it one having a right to vote for or against him as member of the Assembly, in the District of Oswego?—or is he a man who officiously interferes in these things? If he had published this in a paper which circulates only in Oswego County, or in that district, it might to some extent have been pardonable, if it was from honest motives. But what necessity was there, for the purpose of defeating Mr. Littlejohn in the 1st Assembly District of Oswego, of sending this to at least a million of people—all over the country, and to some extent all over the globe? The privilege not only to prevent his election, but to impair his reputation to the ends of the earth! And yet "he is not injured!" Could Mr. Littlejohn, if he had ever so much ambition, accept any State nomination with this stigma attached to him, with any hope of being elected, until he had wiped out this stain? I should like to know what my learned friend considers injury and insult to a man. Nothing, I suppose, but taking a dollar out of his pocket would be an injury. Mr. Littlejohn has a right to aspire to the highest office in this land; his talents entitle him to it, and his course in life entitles him to it; and his faithfulness to his political friends, and the faithful performance of his duty, entitle him to it, if he chooses to ask for it. But is he not shut out as effectually as if he were hanged, while he consents to this traduction on his fame and his maligner stands on the record unrebuked?

This is not an action for slander uttered by the breath

of living man—heard to-day and forgotten to-morrow! 250,000 papers issued from *THE TRIBUNE* Office contain this article; they were read deliberately by millions of people, and these papers are preserved in every town in this State, and in all the Northern States of this nation, and in all the other States where they circulate at all. They are bound up and kept for reference in public and in private libraries, where gentlemen desire a continuous history of the country, for nothing like a newspaper continues that history so graphically, and in the main so correctly. And when Mr. Littlejohn shall have done with all the affairs of this earth, and shall be sleeping in the grave, these traductions of this defendant may meet those who may come after him in his line, under circumstances calculated in the most poignant degree to wound their feelings, and their mouths are effectually closed till this unjust libel is wiped away, either by an honorable retraction of the defendant or by a verdict of a Jury that shall set its stamp upon such conduct and vindicate the character of the maligned. What are all the verbal slanders on earth, compared with one declaration like this, and a series of them going out from week to week? What are the words of a mere earthly individual, compared with these deliberate, cold-blooded attacks, which leave their sting behind them, and will sting, for ages, perhaps, those who trace their line of descent through the blood of the accused? And the man who will not stand up in the face of the world—aye, against the world in arms, if it be necessary—to vindicate his character from such assaults as these, deserves to be hooted from all society, and to be hunted into some desert, where he shall no more meet his fellow-men. We may be maligned by libelous articles, and they may be followed by those of a kindred character, and these followed by a refusal to retract, by justifications spread upon a record, and by wholesale assaults of counsel in Court, with no evidence in law to prove corruption, and yet counsel talk to a Jury about sixpences and sixpenny verdicts. You remember, gentlemen, that the counsel almost conceded that, if he had any claim at all, it was \$25,000, for they had not denied the amount of the claim. But we do not pretend that we are entitled to that sum, because it is in the declaration merely. We knew that the damages were to be assessed by a Jury, yet the defendant does not choose to deny that we have suffered damage to that amount; and when he does not choose to, when called upon under his oath, you may fairly infer that Horace Greeley would not have a libel like that written upon him for anything like that sum. And you may take it into account that he did not see fit to deny it, but came here and spread his justification upon the record, and it will stand there through all time unless your verdict shall wipe it out, and effectually blot it from the minds of men. The cases of *Root vs. King*, in 7 Cowan, 628, and *Dole vs. Ryan*, in 10 Johnson, 249, show what the law is; and there are other cases, with which I do not feel at liberty to occupy your time. There is no distinction between the publisher of a newspaper and an individual, except that what is published is recorded for all time, and except as the power to do injury is greater on the part of the publisher of a paper, so he should be more scrupulous not to publish anything in his paper which he does not know to be true. Where is the man who has any sensibility of soul and of feeling, and who regards his character as worth preserving, who would not rather be stabbed to the heart, and die thus with no reproach upon himself, than to have his character, which is a thousand times dearer to him than life, killed for all time for him, for all time with his children and his grandchildren?

With regard to the series of offers which were submitted here yesterday, it was asserted that they were rejected on our objection. I appeal to you, gentlemen, if we did not consent, at all stages of this case,

that they might connect Mr. Littlejohn with corruption to the greatest extent which they pleased. One of their propositions included the offer to prove that the brother and brother-in-law of the plaintiff were owners of a portion of the stock in one of these roads; and while we objected to the residue, we consented that they might prove that, and we stated expressly, in the hearing of the Court, that we did not desire to shield Mr. Littlejohn not the least iota in this case. Have we tried to prevent the fullest investigation with regard to any corruption which may extend to him? Not at all; we have invited it to the utmost extent; and you remember that my associate stated yesterday, if they would connect the plaintiff with the corrupt legislation, we would concede, for the purposes of this case, that the legislation was corrupt. And "Mr. Littlejohn has not been called as a witness here." Why, is there anything more ridiculous on earth, coming from counsel, than that, when there is not one particle of proof against Mr. Littlejohn—not one iota of that justification is proved. What is there to call him on the stand? We rested our case, and it was made out to the fullest extent. How have they shaken it? Have they proved that one sixpence has gone into his hands or his pocket from the legislation of that year? Have they proved that any friend of his has received a dollar of it? Have they proved that he gave any vote in that Assembly for the purpose of benefiting any individual improperly? Why, upon the same hypothesis upon which the fraud and corruption are charged, there has never been a railroad charter granted in this State in which there has not been corruption. There has never been a railroad charter granted but what was intended to benefit individual stockholders, and provided for certain Commissioners to distribute the stock. "Private interest!" Why, you cannot carry on public purposes which the State does not carry on directly, except by holding out public inducements to individuals to embark their funds. This whole Northern country is cross-barred with railroads, to the immeasurable benefit of individuals; and these railroads have been constructed by men who supposed they should make large sums by their investment.

But I am not going to talk to you about the measure of damages. Lay aside all prejudice against either of these parties, and treat them as though they were individuals from the farther banks of the Ganges. Treat them as though you had never heard of them, but had ascertained what their position was, and their power to do evil where they lived. Treat them as though you had never heard of them outside of this case, and then you will do exact and equal and proper justice between them. I will leave it with twelve intelligent men from the County of Oswego, set apart by the officers of their respective towns for the sacred office of jurors. I will leave it with you, on your responsibility, to determine what should be done to wipe out this foul and unfounded stain on the character of the plaintiff, and what should be meted out to the man who has not at all attacked sixty-four other members who voted for these bills. He does not come here claiming to be impoverished; his counsel triumphantly tell you that he has expended a thousand dollars in getting witnesses in this case. Money is free with him. Calculate the daily receipts of the editor and proprietor of that paper, which issues an edition of two hundred and fifty thousand copies, a large portion of them daily; and by the lowest standard, you will find that the gross receipts of his office are more than \$5,000 a day, irrespective of the advertising patronage and the job-work done in his establishment. Do not consider him poor. We have not been able to reach his sensibilities, and make him do justice; and I am satisfied there is only one place through which he can be reached, and that is, through the pocket. Try it, gentlemen, and see if you cannot make him do Mr. Littlejohn justice. If you cannot

make him do justice to Mr. Littlejohn, I ask you to do justice to him, and Justice will be satisfied.

REQUESTS TO CHARGE.

Before the charge the counsel for defendant asked the Court to charge the following propositions. The defendant asked the Court to charge the Jury:

First: That if they believe from the testimony that the defendant acted in the matter of the publication in question, without any malice or mischievous intent, but solely from the sense of duty to the public, they must find for the defendant. The Court declined to charge this proposition. The defendant excepted.

Second: The defendant asked the Court to charge the Jury that it is a question for them to say in what sense the words complained of were used. The Court declined. Defendant excepted.

Third: The defendant asked the Court to charge the Jury that it is a question for them to determine in what sense the words complained of were understood. The Court declined. The defendant excepted.

Fourth: The defendant asked the Court to charge the Jury that malice on the part of the defendant is essential in order to maintain the action. The Court declined. The defendant excepted.

Fifth: The defendant asked the Court to charge the Jury that in the absence of all malice on the part of the defendant this action cannot be maintained. The Court declined to charge the fourth and fifth proposition as desired, but charged in the language of the charge to the Jury on that subject, and declined to charge otherwise. The defendant excepted.

Sixth: The defendant asked the Court to charge the Jury that if they believe the testimony of defendant, the presumption of malice which arises from the face of the libel is rebutted. The Court declined to charge this proposition, but charged as in the seventh proposition submitted to the Jury, and declined to charge otherwise. The defendant excepts.

Seventh: The defendant asked the Court to charge the Jury, that if they believe from the testimony that the defendant, at the time of the publication in question, believed it to be true, and that in coming to that belief he had exercised due care and diligence, prudence and discretion, to ascertain the truth of the charge, the defendant is entitled to their verdict. The Court declined to charge, except as in the seventh proposition of the Judge. The defendant excepted.

Eighth: The defendant asked the Court to charge the Jury, that if they believe that the defendant made the charges in question solely from a sense of duty, he is entitled to their verdict, even though they should believe that it was a mistaken sense of duty. The Court declined. The defendants excepted.

CHARGE TO THE JURY.

Judge Bacon then charged the Jury as follows:

GENTLEMEN OF THE JURY: The duty that I have to discharge in this case is a very plain and simple one, and I shall proceed to its discharge in a very plain and simple manner, and I trust with commendable brevity. And I shall do so entirely unaffected by any outside considerations, and utterly irrespective of any consequences which may be supposed to follow from the discharge of that duty. It is the privilege, and business, and duty of the counsel to present the case to the jury, with all the ability, and the eloquence, and the zeal, which have been manifested in this case by the respective counsel who have addressed you. It is their privilege and their right to make to you, elaborate, learned, and lengthy arguments, and, if they shall choose, to make earnest and even passionate appeals to you.

The business of the Court and the duty it has to perform are quite different; they demand no such zeal, no

such earnestness, and no such sensibility. I have nothing to do, gentlemen, but to direct you to some plain, simple propositions of law, which I suppose to be involved in the case, and which are to be taken by you as landmarks and guides, and to suggest to you a very few topics to which your attention should be directed, when you come to deliberate on the case in the jury-room.

And I must ask you, gentlemen, in the first place to dismiss from your attention a very considerable portion of that which has been talked about here. Because, in the shape which the case has assumed, and within the contracted issues to which I felt it my duty to confine the cause, a great deal which was said in the opening, of course would now be deemed irrelevant to the case. That opening was adapted to a state of things which the counsel very rightfully, as he deemed was the law, supposed it to be his duty to open to you. And if I had construed agreeably to the view taken of it by the counsel, the field would have been a very large one and a very wide one, and his opening none too extended for the field he would have felt himself obliged to occupy; but having made a ruling in the early part of this case, which, whether right or wrong, is for the present the law of the case, we are brought down to a very narrow issue, and a very few points to which it is needful that your attention should be directed.

The counsel for the defendant claims that the Jury is to judge whether this is a libel or not, and whether it imputes personal corruption to the plaintiff or not; and that in this respect you are at liberty to construe the language of this libel as you see fit, and as in your judgment it shall seem to demand at your hands. Now, gentlemen, as a general proposition I do not dissent to that; for the general rule of law is that the jurors are the judges as to whether the publication alleged to be libelous, is so or not. I admit that to be the *general* rule of law, but I do not think it to be the *invariable* rule of law; and I think a case could be presented—and unless I much misconceive it, this case is one—where the general rule does not apply. If a libel is doubtful and uncertain in its meaning; if it consists of a variety of allegations upon a variety of subjects; the duty of construing them may very properly fall within the province of the Jury. And I can illustrate that as well by the case of Fry *ag. Bennett*, which has been read to you, as by any other case. In that case, the libel complained of, consisted of a variety of allegations, some of which consisted of nothing more than what might be deemed fair, though perhaps severe, criticisms, upon the conduct of the plaintiff in that suit, as a conductor of an opera; and there were other allegations that imputed to him that which was in its nature disgraceful and perhaps even criminal. I do not stop to characterize them, but there were a variety of allegations of this kind, in regard to some of which the defendant claimed they were privileged, and in regard to all of which the plaintiff claimed he was entitled to recover, because they were not within any such privilege. The Court, in giving the case to the Jury, told them they must take these libels themselves and discriminate with regard to what portion of them came within a just definition of legitimate criticism, and that which was without the bounds of just criticism, and was defamatory, injurious and libelous in its character. That case well illustrates a class of cases where the Jury are indeed the judges, and should rightfully be the sole judges, of the character of the libelous charge alleged.

But in this case, gentlemen, I was obliged to make a ruling in order to determine what were the issues to be tried, and in order to confine the proof to what was fairly triable before you, and I was obliged myself to give a construction to the language of this libel; and I gave that construction to it, in which I laid down the rule that the libel imputed personal corruption to the plaintiff, and that any proof outside of that was irrelevant

proof, and therefore not admissible. I say I was obliged to make that ruling; for the case was one which in my judgment called for it; and, having made that ruling, it is to be taken as the law of the case now, and to be held as the law throughout. Now, that ruling may have been erroneous, and all wrong; and it is very likely that, having begun with this error, I may have tottered on continuously; but there is great satisfaction in knowing that this wrong, if it be such, is not irreparable, and will not injuriously affect the defendant in this case; for, happily, there is another tribunal, which revises all my errors—all errors committed in the Circuit, in the haste in which cases are tried there, and in the absence of all needful deliberation—a tribunal that sits in calm judgment on all these cases, and rights the wrong where it exists; or, if it does not exist, affirms the ruling. Therefore, Gentlemen, there will be an opportunity hereafter to correct these errors into which I may have fallen, and the defendant will be deprived of no just right which pertains to him in that regard. That being the case, the first proposition of law which I have to lay down is this:

First: The Court having ruled that the alleged libel contained a charge of personal corruption, the Jury will receive this as the construction of the language, and consequently that the words are in law libelous.

You will take that, gentlemen, as the ruling of the Court in this case. The construction I give to the words is that it imputes a charge of personal corruption, and therefore is in itself libelous. This relieves you from the duty of construing it for yourselves.

Second: A libel is a willful and malicious publication concerning another; but malice so far as the law requires it to sustain the action, is implied from the publication of that which is untrue; the law presuming it to exist in such a case. Therefore *express malice* is not required to sustain the action; but this presumption may be repelled by circumstances that tend to disprove it.

Now, in this, I don't know but I may be supposed to run counter to the decision of the Court of Appeals, in the case to which my attention was called. If I do, I shall be found to be in error; but I have always supposed that was a true proposition in law, from the earliest day in which my attention as a student was ever called to the law appertaining to libel and slander. And although Judge Selden seems to imagine a sort of imaginary and attenuated line between malice in law and malice in fact, yet as I have always understood the law to be, that from the falsity of the publication, malice is implied, though it may not in point of fact exist; because no man is at liberty to publish anything but the truth; and if he publishes that which is not true, the fact of its untruth, in the law, implies malice in the publication. It is very true that in that case Judge Selden held that the inference of the law did not exist; and the reason was that it was a privileged communication. If I had held in this case that the publication here was privileged, then the inference of the law would have been displaced, it would not have existed. In that case in the Court of Appeals, the communication was a privileged one and therefore it was protected *prima facie*, and the plaintiff was obliged to show, in order to maintain his action, that it was uttered maliciously. Because, although when a party has uttered a truth, yet if he is actuated by malice in that regard, he is still liable to be prosecuted and pay damages. He pays them in that case because he is actuated by malicious motives extending beyond the mere fact of publishing that which is not true. That proposition, then, is the law, which I lay down for your guidance; that the law implies the publication to be malicious if it be untrue; and in this case the defendant, standing unjustified, and the imputation being one of personal corruption, and there being no proof that there was personal corruption, the allegation is an

untrue allegation; therefore by law is impliedly malicious.

Third : If one by mistake, or inadvertence, or want of sufficient knowledge, publishes a libel, the law imputes malice only so far as to make him liable for such damages as the Jury may deem reasonable under all the circumstances of the case.

The law only imputes malice, just so far as to make him liable for damages which may seem reasonable. They may be nominal damages, just according to the circumstances, there being nothing to enhance them to any aggravated degree, and this covers that class of cases.

Fourth : But there may exist actual malice in the purpose and spirit of the author of the publication; or there may be an entire absence of malice on his part, and both are subjects of proof outside of the mere fact of publication.

Now the plaintiff may prove express malice; he may prove that the party has said, "I will publish such an article against such a man; I mean to follow him up and have vengeance against him—I will have it." Expressions of that kind, indicating a purpose and spirit and intent to inflict an injury, or at all events that the party is not actuated by an innocent purpose, and that he does not act by inadvertence or through mistake—that it is not an error of judgment or of information, but that it is a deliberate design to inflict an injury, and that he sets about preparing the means by which the injury is to be inflicted. On the other hand, there may be a perfect absence of malice, there may be no thought of ill will and no purpose to injure, but simply to utter what he thinks to be true, with a motive which seems to him to justify it; or that he seems to be called upon by some great public exigency to utter what he thinks just and right, though it may be mistaken, untrue, and false, yet he has not the *animus* and the purpose to inflict an injury; therefore he has no actual malice in the case.

Fifth : If actual malice is shown to exist, it will not protect one who has published that which is *prima facie* libelous, although without this the publication would be privileged, or even justifiable.

This is only repeating what I said in a more specific form. Wherever you show actual malice you deprive the party of any justification he had by reason of the fact that what he said was privileged; because if a man will say what is privileged, with a wicked and malicious purpose, it does not excuse him.

Sixth : If the plaintiff has proved here the existence of actual malice, that may be considered by the Jury in aggravation of damages, and those of a punitive character may be given.

And that is the only case in which punitive damages can be had, but only those which naturally flow from the utterance of a libel. It is where a malicious character stamps the publication that you can go beyond the ordinary character of damages and give those which are called "punitive," or sometimes *vindictive*, which is not a good term.

Seventh : If, on the other hand, the defendant has satisfied the jury that he was not actuated by malice, but published what he did without any malicious motive and believing it to be true, that is to be considered by the jury, and will materially mitigate the damages.

That is a contrary fact, and it reduces the damages, if the defendant shows that he was actuated by good motives and had no malice in his heart, no design to injure and no purpose of vengeance, and that he did not indulge in any vindictive, injurious and hateful feelings toward the party, but that he uttered what he believed to be true—what he had heard from others, and what he supposed he had a right to publish because it was true—in the absence of all feelings of hatred, animosity and ill-will, then, gentlemen, it is very clear that the damages should be essentially mitigated; because you take out of the slander, or the

libel, the sting and its intensity, and you strip it of that which gives it its worst character and form.

Whenever the defendant presents himself for proof of this kind, plaintiff can again prove this on other occasions the party has made malicious and defamatory attacks in a harsh and cruel manner. On the other hand, the defendant has a right to show that his personal relations toward the party, were always good and kind, and that he had no practical ill will toward him, and did not look upon him in the light of an enemy; but in respect to what he uttered, he did what he believed to be true, and what he thought he was called upon to utter by high considerations of the public good. If such a state of things exists, then the damages, as you perceive, are greatly mitigated.

Now in this case upon one side, there is some proof that some malicious motives existed. On the other side, it is insisted that there is proof of the absolute and entire absence of all malicious motives. The proof on that subject lies within a very narrow compass; it was drawn entirely and exclusively from the defendant himself. He states upon the stand, that so far as he knows, his personal relations towards Mr. Littlejohn were of a friendly character; that so far as he knew himself he had no malice in making the libel.

On the other side, it is insisted that, in addition to the intrinsic character of the act itself, he had published in regard to the plaintiff other statements, and had made other allegations in regard to him; that he had opposed his election to the Speakership of the House, and that he had published something with regard to him, which, on being asked to explain and retract, he had declined to do so, except in the way which he thought it was equally just and right he should be called upon to explain. And it is said this shows an inimical and malicious feeling. It will be for you to judge with regard to this. Here is the statement of the defendant, in which he states just what he did and just what he thought. And the letter which has been read is also before you, gentlemen, and in evidence. I must say, with regard to it, that I think it a very manly and honorable letter, and such as indicates on the part of him who wrote it no feeling which any honorable mind might not entertain. Still, you are the judges with regard to all that, and with regard to the conduct of the defendant on the occasions which have been spoken of; you are to say whether, in your judgment, they indicate that he was actuated by motives of ill-will and malice, or whether, divested of all motives of that kind, he did what he did in good faith, and in the exercise of what he thought were his just rights, without any design or intent to injure or defame or oppress the man.

I leave that question of this case with you, gentlemen; your conclusions upon it are to be drawn from the testimony which is in the case and not from anything outside, for upon this particular head you have nothing to enlighten you except the testimony which was given here upon the stand. Finally, gentlemen, I have to say to you:

Eighth : The amount of damages are in the sound discretion of the Jury; they are not to be measured by any standard of dollars and cents; that is, the Court has no rule to give, by which you are to be guided; you are the judges in that respect, you are the arbitrators in respect to what shall be awarded in compensation. They are intended to repair the injury alleged to be done to the plaintiff, and the pain and mental suffering which he has undergone in consequence of this libel uttered against him, are fair considerations for the Jury. And in estimating the damages upon the foregoing principles, the character, condition, position and influence of the respective parties is to be taken into the account.

One party may be more likely to suffer from a libel than another; for all men do not suffer alike by any means. Men differ in constitution and in temperament; they differ in their surroundings and relationships in

life; they differ in the position they occupy. The plaintiff is a public man—a man of mark and distinction; a man who had occupied an elevated place in the Legislature of the State; and such a man would be likely to feel a libel with greater acuteness than one living in a more obscure position and traveling in a smaller round and occupying a much more limited field. On the other hand, the power of the party injuring, if any injury has been inflicted, may also be taken into consideration. The position the defendant occupies as the proprietor of an influential press—a paper maintaining the largest circulation, certainly, of any paper on this continent, and probably in the world, much read, extensively distributed and widely appreciated, and which has become almost a public institution in the State, under the guidance of great ability, is to be considered. An engine of this description, of course, is capable of inflicting more injury than one of inferior character, smaller circulation, and a lower type of respectability. For if an injury has really been inflicted, its intensity must be aggravated by the high respectability of the quarter from whence it comes. All these considerations may be taken into account by you in arriving at a just conclusion in this case. They are all I have felt it my duty to mention to you, for I do not regard it as any part of my province to step out of the plain, simple path which the law has marked out for me—to lay down the law which I suppose enters into the case, and ask you to give to those propositions such weight, and to those considerations such importance as you think they are entitled to. Upon the whole subject of damages, in a case where the Jury come to the conclusion that a right to recover them has been established, the rule is, perhaps, no where better expressed than in the words of Justice Bosworth, in the case of Fry vs. Bennett, which I will repeat to the Jury, as containing a proper direction for them in this case: “The true rule is, that if the defendant fails to justify, the plaintiff is entitled to recover, at all events, his actual damages. He has a right to these, although the defendant, at the time of publishing the libels, believed the facts alleged to be true. The actual damages are to be determined by the Jury, in the exercise of a sound discretion, upon a careful consideration of the offense or misconduct imputed to the plaintiff, the circumstances of the publication, the extent of its circulation, and the natural and necessary consequences

of such a publication, according to the results of human observation and experience.” Be yourselves the judges as to what shall be the result of this suit. I have no personal desire, nor wish, nor purpose, other than that you shall do justice, exact and ample justice, between these parties.

The counsel for the defendant excepted to the first, second, fourth, sixth, and eighth propositions of the charge. *Also* to that portion of the charge that holds that the plaintiff can prove that on other occasions the defendant has published articles and done that which is claimed as evidence of malice. *Also* desired the Court to charge further that the act of Mr. Greeley in opposing the election of Mr. Littlejohn as Speaker, after the transaction in question, and after this suit had been threatened, cannot be taken in evidence.

Court declined. Exception for defendant.

DISAGREEMENT OF THE JURY.

The Jury retired about 4 o'clock p. m. At about 8 o'clock in the evening, in the absence of the defendant and his counsel, the Jury came into court and stated that they were unable to agree, and made some inquiry of the Court as to whether he had instructed them that the act was a libel. The Court repeated the proposition contained in the charge, reading from his minutes; and again the Jury retired. It is understood that after the Jury retired one man of their number, who had heretofore been for giving the plaintiff nominal damages, refused to do so, so that the Jury stood nine for the defendant, two for giving nominal damages to the plaintiff, and one for large damages to plaintiff. About 9½ o'clock the Jury again came into court, and stated they were still unable to agree. One of the jurors asked the Court if the Jury were at liberty to decide upon the question whether the article complained of was in fact a libel. The Court replied that he had twice instructed them on that point, and if he had not been understood he did not think it possible he should now be understood. Thereupon the Jury were discharged.